

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 TEXARKANA DIVISION

4 PANTECH CORPORATION AND) (
PANTECH WIRELESS, LLC,) (CIVIL ACTION NO.
5 PLAINTIFFS,) (5:22-CV-69-RWS

6 VS.) (TEXARKANA, TEXAS

7 ONEPLUS TECHNOLOGY (SHENZHEN)) (
COMPANY LIMITED,) (OCTOBER 17, 2024
8 DEFENDANT.) (8:30 A.M.

9
10 JURY TRIAL TRANSCRIPT

11 BEFORE THE HONORABLE ROBERT W. SCHROEDER III

12 UNITED STATES DISTRICT JUDGE

13
14 FOR THE PLAINTIFFS: Mr. James A. (Tripp) Fussell, III
Ms. Tiffany A. Miller
15 Ms. Courtney Krawice
Mayer Brown, LLP
16 1999 K Street, NW
Washington, DC 20006

17
18 Mr. Geoffrey P. Culbertson
Mr. Kelly Tidwell
Patton Tidwell & Culbertson, LLP
19 2800 Texas Boulevard
Texarkana, TX 75503

20
21 Mr. Graham (Gray) M. Buccigross
Mayer Brown, LLP
Two Palo Alto Square
22 3000 El Camino Real
Suite 300
23 Palo Alto, CA 94306
24
25

1 FOR THE DEFENDANT:

Mr. David M. Airan
Mr. Wesley O. Mueller
Mr. Paul J. Filbin
Mr. Christopher J. Gass
Mr. Michael J. Schubert
Mr. James W. Sanner
Leydig Voit & Mayer, Ltd.
Two Prudential Plaza
180 North Stetson
Suite 4900
Chicago, IL 60601

Mr. Kevin Collins
Mr. Justin Burnam
Mr. Matthew Kudzin
Covington & Burling LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001

Mr. G. Blake Thompson
Mann Tindel & Thompson
112 E. Line Street
Suite 304
Tyler, TX 75702

14 COURT REPORTER:

Ms. Shelly Holmes, CSR, TCRR
Official Court Reporter
Honorable Robert W. Schroeder III
United States District Judge
Eastern District of Texas
Texarkana Division
500 North State Line Avenue
Texarkana, TX 75501
shelly_holmes@txed.uscourts.gov

20 (Proceedings recorded by mechanical stenography, transcript
21 produced on a CAT system.)
22
23
24
25

1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 Good morning, everyone. All right. We are in the
6 final stretch. We have distributed the jury instructions
7 and the verdict form to the parties. Have you all had a
8 chance to look at those one last time?

9 MR. FUSSELL: Yes, Your Honor.

10 THE COURT: Acceptable to the Plaintiffs?

11 MR. FUSSELL: Yes, Your Honor.

12 MR. AIRAN: Acceptable, Your Honor.

13 THE COURT: All right. Acceptable to the
14 Defendants, as well.

15 Disputes related to closing slides, whoever wishes
16 to go first.

17 MS. KRAWICE: I can start, Your Honor. Courtney
18 Krawice for Pantech.

19 THE COURT: Good morning.

20 MS. KRAWICE: Good morning.

21 So we have objected to two slides in Defendant's
22 proposed demonstratives for closings. Do you have a copy
23 of them in front of you, or would you like this one?

24 THE COURT: I don't have a full-size copy, but
25 I've got little images.

1 MS. KRAWICE: Okay. Well --

2 THE COURT: I think I can --

3 MS. KRAWICE: It's kind of a big-picture idea I
4 guess.

5 THE COURT: I can follow along.

6 MS. KRAWICE: So the first one is on Slide 13
7 where there's a reference to the GNJ license, a woman who
8 clearly is frustrated with getting a parking ticket, it
9 seems, with a thousand dollars, which comes as no surprise
10 is what GNJ paid for this license.

11 We don't really understand how this slide is going
12 to be used, and there's a couple of issues with that.

13 First, we believe that comparing a license that
14 Pantech believes to be comparable to something like a
15 parking ticket, which is a known nuisance to nearly
16 everyone, is prejudicial.

17 We are concerned that there also might be an
18 implication that if Pantech is the one issuing these
19 parking tickets, that it could potentially make -- to make
20 people pay it, could go to holdup. Or the fact that if
21 they're saying that Pantech is the one issuing these
22 parking tickets, again, that's inflammatory, and we don't
23 believe that's necessary.

24 THE COURT: Mr. Airan.

25 MR. AIRAN: Your Honor, I think this is fairly

1 within closing. We've heard GNJ paid [REDACTED]
2 for the license. This is no more than, you know, a
3 nuisance for them. They were getting out of the market.
4 They paid a thousand dollars. I think this is fairly
5 within closing to explain that concept to the jury.

6 THE COURT: All right. I'm going to overrule the
7 objection to this slide.

8 MS. KRAWICE: Yes, Your Honor.

9 The second slide is the following one. It's just
10 a photo of the Baldwin family. The other side was fairly
11 forthcoming during the meet-and-confer last night and
12 shared that they intend to use this for an analogy for
13 patent families.

14 A couple of issues with that.

15 First, I'm not quite sure if Your Honor is aware
16 of the legal implications of invoking Alec Baldwin on this
17 slide, but I think it wouldn't come as a surprise to the
18 jury. We think then for that reason if they're to compare
19 either Pantech or one of Pantech's patents or a member of a
20 patent family that's asserted here, to Alec Baldwin, we
21 think that's unnecessarily inflammatory. We don't need the
22 Baldwin family to be the connection.

23 But in further of that, it's confusing to
24 represent any one particular patent as the Baldwin family
25 tree because that evidence hasn't been entered here

1 regarding what is the scope of these patent families? Is
2 it just, you know, parent/child relationships? Does it go
3 beyond that? To compare any particular license to the
4 Baldwin family tree in particular would be misleading and
5 confusing, as well as inflammatory.

6 We did offer a compromise that, you know, if we
7 can maybe genericize this or even maybe pull the actual
8 patent families tree in some way, that would at least be a
9 little bit closer. But as it is right now, this is just
10 unnecessarily inflammatory and confusing to the jury.

11 THE COURT: Mr. Airan.

12 MR. AIRAN: Yes, thank you, Your Honor. Again,
13 this is I think fairly within closing. Not all Baldwins
14 are equal. And when they did their patent family analysis,
15 they did a family analysis.

16 And what we're simply doing is drawing attention
17 to the jury that not all patent family members are the
18 same. Alec is not William who is not Daniel who is not
19 Stephen. That's all we're saying. We think that's going
20 to be something the jury would understand.

21 THE COURT: Well, I mean, I think there's a fair
22 point that's been raised here. Why use the Baldwin family?
23 Why not use the Brady Bunch?

24 MR. AIRAN: We could have used the Brady Bunch.
25 We thought this was something more timely, more that the

1 jury would understand, that Alec Baldwin -- thought that
2 was a more appropriate analogy that Alec Baldwin is closer
3 to Stephen Baldwin is closer to Billy Baldwin. That's
4 something the jury would be able to understand, more so
5 than the Brady Bunch. We have a younger bunch of jurors on
6 this case, so we thought we would like to explain that to
7 the jury.

8 THE COURT: Yeah, I mean, is there going to be any
9 discussion at all about Mr. Baldwin's legal troubles?

10 MR. AIRAN: No, no, not at all. We're just going
11 to say Alec Baldwin is not -- if you count up the number of
12 movie references that Alec Baldwin, you can't attribute
13 them to Stephen Baldwin and vice versa. That's all we're
14 going to say about it.

15 THE COURT: What about the compromise that Pantech
16 has offered here that you just use some sort of a generic
17 family tree?

18 MR. AIRAN: Again, I don't think that would convey
19 to the jury what we're trying to convey, that not all
20 Baldwins are equal. They're likely -- the jury is likely
21 to know Stephen Baldwin, they're likely to know Alec --
22 maybe we could do a football analogy, if you did the
23 Manning family or something like that, because then, again,
24 the jury might understand the Manning family between
25 Peyton.

1 THE COURT: How about the Manning family,
2 Ms. Krawice?

3 MS. KRAWICE: I recently met Archie and he's
4 really nice. I'm -- I think we'd be okay with that if we
5 could just see it before it's being used to see how it's
6 being displayed.

7 I guess the concern is still slightly that there
8 hasn't been evidence as to what the family trees of these
9 asserted patents actually look like here. And, you know,
10 to say that this patent, like, for example, the '247, is
11 the Manning family, and it has these cousins or nephews,
12 you know, that are --

13 THE COURT: Yeah.

14 MS. KRAWICE: It's kind of confusing and
15 misleading when none of that has been brought up in court.

16 THE COURT: Let's see if we can get a slide that
17 would represent the Manning family. I think maybe they
18 might be more currently relevant than the Brady Bunch, but
19 I am concerned about the implication raised by, you know,
20 recent legal issues related to the Baldwin family.

21 MR. AIRAN: Okay. We'll provide them with a
22 Manning family tree.

23 THE COURT: All right.

24 MS. KRAWICE: That's all, Your Honor, for us.

25 THE COURT: Okay.

1 MR. THOMPSON: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. THOMPSON: So we have -- there's three slides
4 that there are objections to of their closing slides. The
5 first is 7-2, if we can pull it up.

6 Can you pull up -- he doesn't have that. Can you
7 pull up --

8 And just to preview while he's pulling that up,
9 Your Honor, the objection to this is -- slide -- when he
10 gets it up is it illustrates [REDACTED]
11 [REDACTED] -- and No. 2, yeah.

12 And the objection here is, Your Honor, Dr. Putnam
13 testified he did -- that Sony, there is no such rate. They
14 [REDACTED]. So this [REDACTED] is
15 misleading.

16 Here it is on the far-left corner, Your Honor. So
17 our objection to this, it's misleading and prejudicial.
18 It's not disclosed.

19 Dr. Putnam testified that they didn't pay a
20 running royalty rate, correct?

21 That's right. For [REDACTED] there is no such rate.

22 So that's our objection to that slide, Your Honor.

23 THE COURT: All right.

24 MS. MILLER: Your Honor, I have been informed that
25 we are willing to withdraw this slide.

1 MR. THOMPSON: Oh, okay.

2 THE COURT: All right. Solves that.

3 MR. THOMPSON: The next slide, Your Honor, is
4 Slide 3, and our objection to this, this is an apparent
5 attempt to I guess apply Dr. -- some apportionment from
6 Dr. Putnam to our -- to Dr. Lopez's royalty rate, but this
7 is beyond the scope.

8 Dr. Putnam's apportionment was not -- this was not
9 disclosed to us. He said that he could not unpack the
10 [REDACTED] and he didn't disclose any sort of
11 apportionment. So this is the first time we're seeing
12 this. So that's obviously beyond the scope, prejudicial,
13 and misleading.

14 MR. CULBERTSON: Your Honor, I think there may be
15 some misunderstanding. This is not an effort to say that
16 Dr. Putnam apportioned the [REDACTED]. Because Dr. Lopez
17 performed no apportionment to come up with his royalty
18 number, we used the actual numbers that Dr. Putnam used to
19 apportion the patents-in-suit.

20 So if -- if Dr. Lopez had done that appropriately,
21 there'd actually be a different calculation. So that's all
22 we're doing here. We're going to point out, one, that
23 Dr. Lopez hasn't performed any apportionment, and that if
24 he had, this is what the royalties would look like.

25 It is absolutely fair game in closing argument to

1 identify -- because he admitted yesterday he did not
2 perform any apportionment.

3 THE COURT: He did?

4 MR. CULBERTSON: Dr. Lopez admitted that.

5 THE COURT: Okay. All right.

6 MR. THOMPSON: Well, Dr. Lopez's apportionment was
7 struck by you, Your Honor, and I think the problem with
8 this is, is what just happened. I don't understand the
9 slide, so it's confusing to me. I feel like it maybe --
10 it's going to be confusing to the jury.

11 THE COURT: Well, go ahead.

12 MR. CULBERTSON: I'm going to explain it to the
13 jury. I -- we explained it to them last night. This is
14 easy stuff. We're just applying the math that should have
15 been applied to see what the royalty rate actually would be
16 if he had performed apportionment.

17 THE COURT: I'm going to overrule the objection to
18 this.

19 MR. CULBERTSON: Thank you, Your Honor.

20 MR. THOMPSON: Okay. Moving on, Your Honor, our
21 last objection is to No. 5.

22 Okay. You saw this yesterday, Your Honor --

23 THE COURT: Yes.

24 MR. THOMPSON: -- which we did, too, for the first
25 time. And, as you know, the jury has never seen this.

1 They've never seen this multiplier or these total numbers.
2 It was never put forth in this case.

3 We're going to have to rebut this in closing
4 argument, which you've already instructed the jury and will
5 again, that closing argument is not evidence. So we're
6 going to have to rebut this for the first time.

7 And one of two things have happened here,
8 Your Honor. Either Pantech knew about this number all
9 along and just chose to tell us yesterday, or they didn't
10 know about it and just came up with it yesterday, both of
11 which are untimely and highly prejudicial to us.

12 Your Honor, you were here obviously the first
13 trial. We never saw this multiplier and these numbers.
14 It's never been used. This number has never been given to
15 us. And it's highly prejudicial for us to have to rebut it
16 now.

17 THE COURT: Yeah. My concern is if -- if you
18 don't have some number from Pantech, the jury's not going
19 to know what Pantech's request is.

20 MR. THOMPSON: Well, that's a --

21 THE COURT: And we're back in the same position we
22 were at the first trial.

23 MR. THOMPSON: I understand, Your Honor. But
24 that's a problem of Pantech's own creating. We could have
25 had this number given to us long ago.

1 If this was their intention and they base it on
2 this rog -- interrogatory which does not have this number,
3 by the way, then it could have been given to us all along.

4 And if they didn't want to use it, okay, maybe
5 they wanted to try something else. But we've never seen
6 this. We're now on the second trial on damages in this
7 case, and we've never seen these multipliers, and we've
8 never seen these numbers.

9 And there's nothing fair about us getting hit with
10 this the day before closing arguments and we have to
11 address it the first time on closing argument.

12 So we have to rebut this in front of the jury in
13 closing. The jury never saw this number. I mean, if they
14 wanted to use this number, Your Honor, Dr. Jung could
15 have -- they could have done it through him. This is where
16 they claim that these numbers come from -- you know, these
17 percentages, but they didn't do that.

18 THE COURT: Right.

19 MR. THOMPSON: So they shouldn't get to do it now.

20 THE COURT: Well, I mean, we did discuss what
21 these numbers potentially could be and the discounts could
22 be at the pretrial conference, and the Defendant could have
23 done the math itself, could it not have?

24 MR. THOMPSON: I guess we could have tried to
25 guess what they were going to do. If that was the case,

1 why didn't they just say go back and do these multipliers
2 and this number, and that may be where we come down on
3 this, and at least we wouldn't have seen it for the first
4 time the day before closing argument.

5 I mean, sort of putting the onus on us for their
6 damages number, I don't see how that's fair. I mean, if
7 this was this simple, Your Honor, it could have been given
8 to us long ago, a long time -- I'm talking about before the
9 first trial. And if they chose not to use it, okay, I
10 understand that. You know, decisions are made.

11 But we're seeing this and this multiplier, and I
12 still think the biggest problem is the jury never saw it.
13 They've never seen this in evidence.

14 Nobody put a slide up with these multipliers on
15 it. Nobody put a slide up with these numbers and said you
16 may be asked to consider this as part of your award of
17 damages in this case.

18 And, to me, Your Honor, that's just -- that's
19 beyond highly prejudicial. And that's our objection to
20 that slide.

21 THE COURT: Well, let me ask you this. What --
22 what if -- I mean, I guess my concern is, you know, we let
23 the Plaintiffs, in their closing, discuss, you know, the
24 testimony that came in, Mr. Jung's testimony, the discounts
25 that he -- that he testified, but not actually do the math.

1 MR. THOMPSON: Well, I mean, again, Your Honor, I
2 think that's the -- they've created this problem. So they
3 could have had Dr. Jung do this math, and at least we would
4 have known and the jury would have had a number.

5 THE COURT: They couldn't have let -- I mean,
6 there is no Dr. Jung.

7 MR. THOMPSON: Isn't he a doctor, Mr. Jung?

8 THE COURT: Oh, perhaps he is but...

9 MR. THOMPSON: Mr. Jung?

10 THE COURT: The fact witness, not the expert.

11 MR. THOMPSON: Well, they -- I mean, they -- if
12 this is -- if that's where he's -- if we're using his
13 testimony for this, which is what they're saying, then that
14 would have been the place to do the math.

15 I mean, if we're using his testimony, maybe that's
16 the problem from the get-go is we're using a fact witness's
17 alleged numbers to create damages. But, regardless, my
18 point is, when Mr. Jung was testifying, if this was the
19 plan, he could have at least walked us through that, right?

20 But they chose not to do that. They chose --
21 basically, Pantech has chosen to never give a number for
22 this discount issue up until yesterday. And that's
23 their -- they created this problem.

24 So we should not have to suffer because of that.
25 I mean, this is the second time we've went through this,

1 and so it seems like there's been plenty of time to give a
2 number, or a range of numbers for that matter, that they
3 were looking to ask the jury for.

4 And here we are again, and we're going to have to
5 get up and tell the jury, well, this is the first we've
6 seen of this number, too, and that's -- that's not fair,
7 Your Honor. It's just not in any stretch of the
8 imagination.

9 THE COURT: He's got a point, Mr. Culbertson. Why
10 couldn't have this number -- why could this number not have
11 been disclosed weeks ago?

12 MR. CULBERTSON: Because we didn't know for
13 certain how the factual testimony would come in. And until
14 Dr. Jung testified and was allowed to testify about the
15 discounts, Your Honor, we'd be guessing.

16 But we all had an informed basis to know what it
17 was because we have disclosed to them through interrogatory
18 responses, through deposition testimony, through argument,
19 through testimony in this case exactly what the discounts
20 are.

21 All we're doing here is math. They would have
22 gone crazy if we'd asked Dr. Jung to perform that
23 calculation. He was allowed to testify to the discounts.

24 Dr. Putnam has testified that discounts are
25 allowed to be put back in, but he was, of course, not

1 allowed to do that calculation.

2 I think I just heard Mr. Thompson suggest that we
3 should have done it through Dr. Putnam, but he didn't
4 render that opinion. He had a different multiplier that
5 you took away last time because it wasn't tied to the facts
6 of the case.

7 This is absolutely rooted in the facts of the
8 case. They've known this. I mean, they could have done
9 the math, you're right. But until -- until the testimony
10 came in the way it did, the math to perform the multiplier
11 wasn't known precisely.

12 I mean, they could have known it. We could have
13 known it -- I guess what I'm saying is this: We could have
14 done this math, you're right, but there is absolutely no
15 prejudice because it has been disclosed --

16 THE COURT: It does seem to me there is some
17 prejudice here. I mean, you all -- you know, we had a
18 pretrial conference two, three weeks ago. We started this
19 case on Monday -- on Tuesday. You all, you know -- you had
20 how long was it after his testimony that you produced the
21 document that you produced last night for the first time in
22 this case?

23 MR. CULBERTSON: I gave it to them yesterday after
24 the lunch break. So when Mr. Airan stood up and said we
25 just got that, he was off by a few hours.

1 When I handed it to him, we had a discussion, they
2 looked at it. Are we going to have any disagreement about
3 the math? No. We have a disagreement about the theory.
4 We understood that, we all knew that. There's no
5 disagreement about the math. That is wildly overblown the
6 way they're describing this.

7 And I'll add this, Your Honor, that \$90,000 that
8 Dr. Lopez was allowed to testify to yesterday, never
9 disclosed before yesterday, never. And we objected, and it
10 was allowed to come in. That was a surprise, that was a
11 true surprise. This, everyone has known.

12 And, you know, I recognize it in the Court's
13 questioning of counsel, everyone knows where this was
14 headed. This data has been out there. This is just math.
15 It is just dividing the original rate by the discounted
16 rate to get the multiplier, and it is laid out for them.

17 THE COURT: So, Mr. Thompson, that's a valid point
18 about Mr. Lopez. Mr. Culbertson accurately describes, at
19 least as I understand it, how the testimony came in. That
20 was some last-minute math that the Defendant was allowed to
21 do. Isn't that correct?

22 MR. THOMPSON: That's right, but there's a big
23 difference.

24 THE COURT: What's the difference?

25 MR. THOMPSON: The jury saw it, and he got to be

1 crossed on it. And that's where the fairness comes in,
2 Your Honor. The jury got to see the number, and
3 Mr. Tidwell got to cross him on that number.

4 This number, the jury never saw it, and we never
5 got to cross anybody on. And if they just decided they
6 were going to use this number based on the testimony this
7 week, then it's a new theory, it's a new theory during the
8 trial of the case, which also makes it untimely and
9 prejudicial.

10 The whole problem with this is the jury never saw
11 it, we didn't get to cross anybody on it, and we're now
12 going to take it up in closing argument, which is not
13 evidence.

14 THE COURT: Well, I mean, if I were you, I would
15 stand up and say not one single witness ever testified to
16 this number. You've never heard that from a single
17 witness's mouth on the stand.

18 MR. THOMPSON: I think that's exactly what we
19 should say, but the problem is we shouldn't have to do
20 that. Why should they get to throw this in, a skunk in the
21 jury box, during closing statement. This is the definition
22 of skunk in the jury box. We're going to throw in a number
23 that no one's ever seen, in closing argument, and hope the
24 jury bites on it.

25 And then the fairness to us is, oh, well, you guys

1 get to get up and rebut it when no witness testified about
2 it. We didn't get to cross-examine -- we didn't even get
3 to explore this in any way with any witness.

4 THE COURT: The problem is we are where we are,
5 Mr. Thompson. And we had this problem before in the first
6 trial, and that resulted in a new trial. And so, you know,
7 I'm going to overrule the objection. I think the -- I
8 think that this is something that can adequately be dealt
9 with in the parties' closings.

10 And, you know, we'll see what the verdict is. You
11 know, we -- you know, we'll have full briefing on that.
12 We'll see what the -- what the jury comes back with.

13 I think there's a fairly compelling argument
14 candidly, Mr. Culbertson, that this is too late, but I'm
15 going to let it go, and we'll see what the jury does with
16 it.

17 I am concerned about the term "uncertainty." I'm
18 not sure where that term -- if that term was used with -- I
19 just -- I'm not sure what the source of that term is.

20 MR. THOMPSON: Your Honor, I think it would be
21 fair to just take the title off of the slide. Obviously, I
22 stand on our objection, but I do think it's misleading, the
23 title.

24 THE COURT: Did any fact witness use this term?

25 MR. CULBERTSON: Dr. Jung used the term that they

1 made these discounts to address uncertainties for
2 invalidity and non-infringement.

3 THE COURT: Can you cite me to a page and line?

4 MR. CULBERTSON: Yes, Your Honor. It may take
5 just a moment. Yes, we can.

6 So two things I'll cite you to, Your Honor. The
7 first was Dr. Putnam's -- the slide that he used for PDX-7,
8 and there was discussion about this one where the fifth
9 step was that the jury can make upward adjustment to
10 account for discount reflecting uncertainty regarding
11 invalidity or infringement.

12 When Dr. Jung was testifying: Why is it that
13 Pantech decided to discount from what it believed to be its
14 true rate to the .5 percent as a standard rate?

15 So when we offer our proposal -- I'm sorry, you
16 asked for page and line. It's Page 221.

17 THE COURT: Could you put it on the ELMO?

18 MR. CULBERTSON: I'll try.

19 So when we offer our proposal in terms of
20 licensing, we wanted to be conservative to the extent
21 possible because in case there might be some occasion where
22 the patent might get invalidated or found non-infringed.
23 So we wanted to be prepared -- prepare for that, which is
24 the reason why we provided the discount.

25 Is it a negotiation tool?

1 It is.

2 So what he's talking about there is the
3 uncertainty for infringement or invalidity.

4 THE COURT: All right. Well, how about we just
5 change it to adjustment for discount or something like that
6 instead of the -- it's the phrase that --

7 MR. CULBERTSON: Understood, Your Honor.

8 THE COURT: -- concerns me.

9 MR. CULBERTSON: Thank you.

10 MR. THOMPSON: Your Honor --

11 THE COURT: Mr. Thompson, is that -- I'm not
12 asking you to agree with it, but I think that -- that
13 helps.

14 MR. THOMPSON: It does help, Your Honor. And if
15 I just -- just for the record -- if it's -- if you'll
16 indulge me, I'd also just like to say this litigation
17 kicker or this adjustment, sort of the flip side of
18 discount contravenes the Georgia-Pacific factors and
19 analysis. That's part of our objection, Your Honor.

20 THE COURT: I understand. I understand.

21 MR. THOMPSON: Thank you.

22 THE COURT: Okay. Any other objections? Is that
23 the last one?

24 MR. THOMPSON: I think -- is there -- there may be
25 an exhibit objection.

1 THE COURT: But as to the slides?

2 MR. THOMPSON: Yeah, that's it. That's all I'm
3 doing, Your Honor.

4 THE COURT: All right.

5 All right. Okay. Who is handling the exhibit
6 objection?

7 MR. SCHUBERT: Mike Schubert for OnePlus. Good
8 morning.

9 THE COURT: Good morning.

10 MR. SCHUBERT: All right. At issue is PX-37,
11 particularly the page Pantech-OnePlus 0012283. Do you have
12 that in front of you?

13 THE COURT: I do.

14 MR. SCHUBERT: Excellent.

15 So kind of confused why we're arguing about this.
16 This exact page was stricken as a demonstrative from
17 Dr. Jung's slide deck. If this can't pass muster as a
18 demonstrative, it can't pass muster as evidence that goes
19 back to the jury. And, really, this seems like this is an
20 inappropriate motion for reconsideration.

21 THE COURT: All right. Let me hear from the
22 Plaintiff on this.

23 MR. CULBERTSON: Your Honor did not allow it as a
24 demonstrative with Mr. Jung. The reason for sustaining the
25 objection was not entirely clear.

1 What we're asking for now is for this page to not
2 be redacted from Exhibit 37. And the basis for that is
3 that Mr. Jung testified -- he laid a foundation for
4 Exhibit 37 as a presentation that OnePlus offers to all
5 potential -- excuse me, that Pantech offers to all
6 potential licensees.

7 And he specifically testified that as they
8 developed their rate and they got to what they considered
9 their .5 standard SEP rate, that they surveyed published
10 rates in the industry and -- to determine this as a check
11 of reasonableness.

12 And that's what this is. So this corroborates his
13 testimony, and it's supported by his testimony that he
14 offered from the stand a couple days ago.

15 There are hearsay objections. The parties have a
16 stipulation that documents that they produced are business
17 records under 803(6). That's what this is. That gets us
18 through the first level.

19 The second level of the hearsay objection speaks
20 to the data in there.

21 I will say, Your Honor, at first -- as an initial
22 matter, we're not really offering it for the truth of that.
23 What we're trying to do is demonstrate that Pantech did go
24 through this process that he described of developing their
25 rate.

1 But even if they were -- even if we were offering
2 it for its truth, these are commercial publications with --
3 of objective data, and they're cited.

4 They've analogized to a case that Judge Bryson
5 handled in the Marshall Division where he disallowed an
6 analyst report in full. But what he said was an -- parts
7 of it can be appropriate. Parts of it can be admitted if
8 you're pulling out the objective data versus the subjective
9 analysis.

10 None of this falls into the latter category. This
11 is just excerpted -- the data that's published, and it's --
12 you know, it honestly is nothing I'm going to spend a lot
13 of time on, but he's testified about this presentation, and
14 it's now pretty much a black box of everything that's been
15 redacted from it.

16 And I think it's entirely appropriate that the
17 jury have in their hands during their deliberations
18 documents which are -- were confirmed by his deposition --
19 excuse me, were confirmed by his testimony because they're
20 going to say they made this rate up out of thin air. I
21 mean, they've been telling you that. And it's just not --
22 it's just not so.

23 THE COURT: So anything further?

24 MR. SCHUBERT: Yes.

25 THE COURT: Go ahead.

1 MR. SCHUBERT: Okay. Couple points.

2 First, this is a basis for the so-called
3 methodology that Dr. Jung relied on. And as we discussed
4 before when we were discussing this as a demonstrative,
5 that's a grievously flawed methodology.

6 He's pointing at all kinds of extremely old
7 data -- information, so these are rates from 2008/2009 on
8 the left and a study from 2013, years before the patents
9 become relevant in this case. And we -- because of all of
10 these issues with the methodology, it's extremely confusing
11 for the jury to look at this.

12 And then on top of that, there's hearsay issues.
13 So this market records exception that he's pointing to is
14 really directed towards objective information such as stock
15 market closings, currency exchange rates, bank and interest
16 rates, weights and measurements, things where there's an
17 objective indicia of reliability.

18 These royalty rates, there's no citation to where
19 these came from. They just came out of thin air in this
20 article on the left-hand side.

21 On the right-hand side, these are estimated
22 numbers of essential patents. Dr. Putnam himself testified
23 that it's extremely unclear what's a truly essential patent
24 anyway. So this is subjective analysis on the right side.

25 And so between these things, this is all hearsay.

1 There is no objective indicia of reliability. These are
2 not market records, and, therefore, this slide should be
3 excluded for hearsay and for being confusing for being
4 directed towards this -- it's essentially a Frankenstein
5 methodology where he's pointing at things he likes and
6 trying to combine them together. The jury would be
7 extremely confused to have this back in the jury room.

8 THE COURT: Anything else?

9 MR. CULBERTSON: Only that I don't see a basis for
10 juror confusion with this, Your Honor. It lines up
11 directly with what he testified to. They've criticized it.
12 That's okay. They take issue with it. There's conflicting
13 testimony among the experts about the number of SEPs. But
14 what it proves is that they didn't pull it out of thin air.
15 They did analysis, and that's how they developed their
16 rate, and then they checked it against the industry
17 standards, and they felt like it was reasonable.

18 That's all, Your Honor. Thank you.

19 THE COURT: All right. I'm going to sustain the
20 objection to the slide. To the extent the record is not
21 clear about why it was not allowed into evidence or allowed
22 to be used before, my recollection is we didn't allow it
23 because I determined that it had essentially crossed over
24 into what would have amounted to expert testimony. That
25 was my concern.

1 So I think, at the end of the day, this is not
2 anything that the jury has seen before, and so to use it in
3 closing for the first time, I think, would not be
4 appropriate.

5 So I'm going to sustain the objection to that.

6 All right.

7 MR. CULBERTSON: Your Honor, just one
8 clarification. We'll redact that page. And then otherwise
9 I understand Exhibit 37 is not objected to?

10 MR. SCHUBERT: Correct.

11 THE COURT: Is that right?

12 Okay. Good. All right. Any final exhibits that
13 we need to read into the record? Is there anything?

14 Ms. Miller, were there others?

15 MS. MILLER: There were a few exhibits entered
16 into evidence yesterday on October 16th.

17 They are PX-2, 103, 104, 183, 186, 189, and that's
18 just -- as just discussed, we move PX-37 into evidence.

19 THE COURT: All right. And those came in without
20 objection?

21 MR. SCHUBERT: That's correct, Your Honor.

22 THE COURT: All right. Those will be admitted.

23 All right. Mr. Fussell, did you have something?

24 MR. FUSSELL: Yes, sir, Your Honor.

25 Out of abundance of caution, we would like to

1 present our offer of proof at this time before the matter
2 goes to the jury.

3 THE COURT: All right.

4 MR. FUSSELL: We intend to submit a filing on the
5 record that's more -- that's more robust, if you will, but
6 I wanted to preserve the record and present this.

7 If allowed to present the testimony of Dr. Jung
8 that was not allowed, he would testify that prior -- about
9 the prior negotiations between the parties. We believe
10 this goes to the weight and credibility of Pantech's
11 comparable license agreement methodology that's been
12 presented at this trial.

13 Also, if allowed to testify, Mr. Jung would
14 present the evidence of the LG agreement that he was not
15 allowed to testify. This would go to show and support
16 Pantech's comparable license agreements.

17 It was an agreement with a large, well-known
18 electronics company in the United States. The
19 consideration for that agreement was [REDACTED] and an
20 additional consideration that supports Pantech's comparable
21 license agreements.

22 In addition, if allowed to testify -- present the
23 testimony of Mr. Yori Xiao, Pantech would have presented
24 the testimony to show that Mr. Xiao has testified that
25 OnePlus has license agreements with [REDACTED]

1 related to the 4G and 5G technology.

2 Specifically, Mr. Xiao's testimony could have been
3 used to impeach the testimony of Dr. Lopez who testified
4 from the stand that he was not aware of any other
5 agreements that OnePlus has with -- related to 4G and 5G
6 technology, which is simply false.

7 Also, if allowed to testify, Dr. Putnam would have
8 presented his analysis of the LG Electronics comparable
9 license agreement, which was the subject of our motion to
10 supplement, which was -- which was denied.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Anything from the Defendants?

14 MR. AIRAN: No, Your Honor.

15 THE COURT: All right. Very good.

16 All right. Anything else we need to address?

17 We'll take a short recess before we have the jury brought
18 down?

19 Anything from the Plaintiffs?

20 MR. CULBERTSON: No, Your Honor.

21 THE COURT: Anything from the Defendant?

22 MR. THOMPSON: No, Your Honor.

23 THE COURT: All right. We will take a very short
24 recess, and we'll get started.

25 COURT SECURITY OFFICER: All rise.

1 (Recess.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Mr. Grigsby, can you have the jury
4 brought down.

5 COURT SECURITY OFFICER: Please rise for the jury.

6 (Jury in.)

7 THE COURT: Please be seated.

8 Good morning, ladies and gentlemen of the jury.
9 Welcome back. Thanks for being here on time. We did have
10 matters to discuss this morning. It took a little longer
11 than I expected, so we're getting just a slightly late
12 start, but pretty close to time. I hope you all had a good
13 evening.

14 As you know, all of the testimony has been
15 presented in the case, and what remains before you begin
16 your deliberations on your verdict is the reading of the
17 final jury instructions, which I am about to do. And then
18 following that, the parties will present their closing
19 arguments to you.

20 You've now heard all of the evidence in the case,
21 and I'm going to instruct you on the law that you must
22 apply. Each of you will have a copy of these final jury
23 instructions that I'm about to give you orally. You're
24 welcome to take whatever notes you want to take as I'm
25 giving those instructions, but I do want you to know that

1 each of you will have a -- your own written copy to review
2 when you get to the jury room.

3 It's your duty to follow the law as I give it to
4 you now. As I have told you -- or told you on Tuesday, on
5 the other hand, you, the jury, are the sole judges of the
6 facts in the case.

7 You should not consider any statement I may have
8 made during the course of the trial or may make during the
9 course of these instructions as any indication that I have
10 an opinion about the facts in the case.

11 You'll hear from the closing arguments -- you'll
12 hear the closing arguments from the attorneys following
13 these jury instructions, and you should recall and remember
14 that statements and arguments of the attorneys, both in the
15 opening statements on Tuesday and today, are not evidence,
16 and they are not instructions on the law. They are
17 intended only to assist you in understanding what the
18 evidence was and what the parties' contentions are.

19 A verdict form has been prepared for you, and you
20 will take this with you to the jury room.

21 When you've reached a unanimous agreement as to
22 the verdict, whoever you have selected to serve as your
23 foreperson should fill in the blanks on the form, date it,
24 and sign it. You should answer the questions as directed
25 in the verdict form from the facts as you find them to be.

1 You should not decide who you think should win and then
2 answer the questions to reach that result. As I said, your
3 answers and your verdict must be unanimous.

4 In determining whether any fact has been proven in
5 the case, you may, unless otherwise instructed, consider
6 the testimony of all of the witnesses, regardless of who
7 may have called them, and the stipulations by the parties.

8 You may also consider the exhibits that were
9 admitted into evidence, regardless of who may have
10 introduced them.

11 You, the jurors, are the sole judges of the
12 credibility of all of the witnesses and the weight and the
13 effect of the evidence.

14 In deciding the facts, you may have to decide
15 which testimony to believe and which testimony not to
16 believe. You alone are to determine questions of
17 credibility or truthfulness of the witnesses.

18 In weighing the testimony of a witness, you may
19 consider his or her manner and demeanor on the stand, any
20 feelings or interest they may have in the case, any
21 prejudice or bias about the case the witness may have, and
22 the consistency or the inconsistency of their testimony
23 considered in the light of the circumstances.

24 Has the witness been contradicted by other
25 evidence? Has he or she made statements at other times and

1 places contrary to what he or she said on the witness
2 stand?

3 You must give the testimony of each witness the
4 amount of credibility you think it deserves.

5 You also must keep in mind that a simple mistake
6 does not mean that the witness is not telling the truth.
7 You must consider whether any misstatement was an
8 intentional falsehood or simply a lapse in memory and what
9 significance should be attached to that testimony.

10 The attorneys in the case are advocates for their
11 competing clients, and they have a duty to object when they
12 believe that evidence is offered that should not be
13 admitted under the rules of the court.

14 If I sustained an objection to a question that was
15 addressed to a witness, you must disregard the question
16 entirely, and you must not draw any inference from its
17 wording or speculate about the witness -- what the witness
18 would have said if he or she had been permitted to answer.

19 If the objection was overruled, you may treat the
20 answer to the question just as you would treat the answer
21 to any other question, as if the objection had not been
22 made.

23 By allowing testimony or other evidence to be
24 admitted or introduced over the objection, I did not
25 indicate any opinion as to the weight or the effect of such

1 evidence.

2 At times during the trial, I've had to talk with
3 the lawyers outside of your hearing up here at the bench or
4 by calling a recess and talking to them when you were out
5 of the courtroom. And this happens often during a trial
6 because sometimes things come up that don't involve the
7 jury, and you should not speculate about what was said
8 during those discussions outside your presence.

9 There are two types of evidence you may consider
10 in finding the truth as to the facts in the case.

11 One is direct evidence, such as the testimony of
12 an eyewitness.

13 And the other is indirect or circumstantial
14 evidence, which is proof of a chain of circumstances that
15 indicates the existence or non-existence of certain other
16 facts.

17 As a general rule, the law makes no distinction
18 between direct or circumstantial evidence. It only
19 requires that you find the facts on the basis of the -- all
20 of the evidence presented.

21 The parties have stipulated or agreed to certain
22 facts in the case. And when lawyers on both sides of a
23 case stipulate as to the existence of a fact, you must,
24 unless otherwise instructed, accept that stipulation as
25 evidence and regard that fact as having been proven.

1 These facts which have been read to you throughout
2 the trial are not in dispute.

3 Certain testimony has been presented to you
4 through depositions or prior trial testimony. A deposition
5 is the sworn, recorded answers to questions asked of a
6 witness in advance of the trial. And prior trial testimony
7 is similarly sworn testimony, recorded answers to questions
8 asked to a witness in advance of the trial.

9 If a witness cannot be present to testify in the
10 courtroom, then the witness's testimony may be presented
11 under oath in the form of a deposition or prior trial
12 testimony.

13 Deposition testimony and prior trial testimony is
14 entitled to the same consideration by you as testimony that
15 was given by a witness in person from the witness stand in
16 open court.

17 So you should judge the credibility and the
18 importance of the deposition testimony and the prior trial
19 testimony to the best of your ability, just as if the
20 witness had been here in the courtroom testifying.

21 Now, you should consider only the evidence in the
22 case, but you are permitted to draw reasonable inferences
23 from the testimony and the exhibits if you feel they are
24 justified in light of common experience. In other words,
25 you may make deductions and reach conclusions that reason

1 and common sense leads you to draw from the facts that have
2 been established by the testimony and evidence in the case.

3 You should not base your decision on any evidence
4 that was not presented by the parties during the case,
5 including your own personal experience with any products at
6 issue in the case.

7 Unless I instruct you otherwise, you may properly
8 determine that the testimony of a single witness may be
9 sufficient to prove any fact, even if a greater number of
10 witnesses have testified to the contrary, if after
11 considering all of the evidence you believe that single
12 witness.

13 When knowledge of a technical subject matter may
14 be helpful to the jury, a person who has special training
15 or experience in that technical field, called an expert
16 witness, is permitted to state his or her opinion on those
17 technical matters.

18 However, you are not required to accept that
19 opinion. As with any other witness, it is solely up to you
20 to decide whether to rely upon it or not.

21 Certain exhibits shown to you during the trial
22 were illustrations, and we call these demonstratives.
23 Demonstratives are a party's description or picture or
24 model used to describe something involved in the trial.

25 If your recollection of the evidence differs from

1 the demonstratives, you should rely on your recollection.
2 Demonstratives are sometimes called jury aids. They are
3 not evidence.

4 A witness's testimony concerning a demonstrative
5 exhibit is evidence. The demonstratives will not be
6 available for you to view during your deliberations.

7 In any legal action, facts must be proven by a
8 required amount of evidence that's known as the burden of
9 proof.

10 The Plaintiffs in this case, Pantech Corporation
11 and Pantech Wireless, LLC, have been referred to as
12 Pantech, or the Plaintiffs, and they have the burden of
13 proving damages for OnePlus Technology (Shenzhen) Company
14 Limited's patent infringement by a preponderance of the
15 evidence.

16 OnePlus Technology has been referred to as
17 OnePlus, or the Defendant, throughout the trial.

18 A preponderance of the evidence means that the
19 evidence persuades you that a claim is more likely true
20 than not true, and sometimes this is talked about as being
21 the greater weight and degree of credible testimony.

22 This burden of proof is not to be confused with
23 the burden of proof known as beyond a reasonable doubt,
24 which is the burden applied in a criminal case, not in a
25 civil case like this.

1 Beyond a reasonable doubt is a higher standard
2 than the preponderance of the evidence standard.

3 In determining whether any fact has been proved by
4 a preponderance of the evidence, you may, unless otherwise
5 instructed, consider the stipulations, the testimony of the
6 witnesses, regardless of who may have called them, and all
7 of the evidence, including all of the exhibits received
8 into evidence during the course of the trial, regardless of
9 who may have produced them.

10 As I did at the start of the case, I'm now going
11 to give you a summary of each side's contentions, and then
12 I will provide detailed instructions on what each side must
13 prove to win each of its contentions.

14 As you know, this is an action to assess the fair
15 and reasonable compensation for established patent
16 infringement. It has been determined that certain OnePlus
17 products infringe Claim 1 of U.S. Patent No. 10,869,247;
18 Claims 6 and 9 of U.S. Patent No. 11,012,954; Claims 9 and
19 11 of U.S. Patent No. 9,548,839; and Claims 1, 6, and 10 of
20 U.S. Patent No. 9,063,654.

21 Together, these patents are referred to as the
22 asserted patents or the patents-in-suit.

23 Pantech is entitled to damages for this
24 infringement, but the parties disagree on the amount of
25 those damages.

1 The amount of damages for the infringement is the
2 only issue you must decide.

3 I want to talk to you about the measure of
4 damages. You must determine the amount of money damages to
5 be awarded to Pantech to compensate it for OnePlus's
6 infringement. The damages must be adequate to compensate
7 Pantech for the infringement of the asserted patents.

8 You must not award Pantech more damages than are
9 adequate to compensate for the infringement nor should you
10 include any additional amount for the purpose of
11 compensating Pantech for its litigation cost or for
12 punishing OnePlus.

13 Damages are not meant to punish an infringer or to
14 set an example. Your damages award should put Pantech in
15 approximately the final -- financial position it would have
16 been in had the infringement not occurred; that is, the
17 payment of a reasonable royalty for OnePlus's sales of the
18 accused products.

19 Pantech has the burden to establish the amount of
20 its damages by a preponderance of the evidence. In other
21 words, you should award only those damages that Pantech
22 establishes it more likely than not suffered.

23 While Pantech is not required to prove the amount
24 of its damages with mathematical precision, it must prove
25 them with reasonable certainty. You may not award damages

1 that are speculative, damages that are only possible, or
2 damages that are based on guesswork.

3 Pantech seeks damages in the form of a reasonable
4 royalty, and you must be careful to ensure that the award
5 is no more or no less than the value of the patented
6 invention.

7 A reasonable royalty is defined as the money
8 amount that Pantech and OnePlus would have agreed to in a
9 hypothetical negotiation taking place at the time
10 infringement first began.

11 In considering this hypothetical negotiation, you
12 should focus on what the expectations of the patent owner
13 and OnePlus would have been had they entered into an
14 agreement at that time and had they acted reasonably in
15 their negotiations.

16 In determining this, you must assume that both
17 parties believed that the patent was valid and infringed
18 and that both parties were willing to enter into an
19 agreement.

20 The reasonable royalty you determine must be a
21 royalty that would have resulted from the hypothetical
22 negotiation and not simply a royalty either party would
23 have preferred.

24 Evidence of things that happened after the
25 infringement first began can be considered in evaluating

1 the reasonable royalty only to the extent that the evidence
2 aids in assessing what royalty would have resulted from the
3 hypothetical negotiation.

4 With respect to the '839, '247, and '954 SEPs, any
5 reasonable royalty must reflect that Pantech is obligated
6 to license those patents on fair, reasonable, and
7 non-discriminatory terms. You've heard this referred to as
8 FRAND terms.

9 Therefore, a reasonable royalty as to the '839,
10 '247, and '954 SEPs cannot exceed the amount permitted
11 under Pantech's FRAND obligations.

12 The parties have stipulated as to notice and
13 amounts of licensable sales for each patent, which you
14 heard read into the record as stipulations.

15 The amount you find as damages must be based on
16 the value attributable to the patented invention as
17 distinct from unpatented features of the accused product or
18 other factors such as marketing or advertising, or
19 Pantech's size or market position.

20 A royalty compensating the patent owner -- holder
21 for damages must reflect the value attributable to the
22 infringing features of the product and no more.

23 The process of separating the value of the
24 allegedly infringing features from the value of all other
25 features is called apportionment.

1 And when the accused products have both patented
2 and unpatented features, damages must be apportioned so
3 that it is based only on the value of the -- of the
4 patented features and no more.

5 With respect to the '839, '247, and '954 SEPs, any
6 royalty for the patented technology must be apportioned
7 from the value of the standard as a whole, and the royalty
8 must be based on the value of the invention, not any value
9 added by standardization of that invention.

10 In deciding what is a reasonable royalty that
11 would have resulted from this hypothetical negotiation, you
12 may consider the factors that the patent owner at the time
13 and the alleged infringer would consider in setting the
14 amount the alleged infringer should pay.

15 Some of the factors -- some of the kinds of
16 factors that you may consider in making this determination
17 include:

18 1, the royalties received by the patentee for the
19 licensing of the patent, proving or tending to prove an
20 established royalty;

21 2, the rates paid by the licensee for the use of
22 other patents comparable to the patent;

23 3, the nature and scope of the license as
24 exclusive or non-exclusive or as restricted or
25 non-restricted in terms of territory or with respect to

1 whom the manufactured product may be sold;

2 4, the licensor's established policy and marketing
3 program to maintain his or her patent monopoly by not
4 licensing others to use the invention or by granting
5 licenses under special conditions designed to preserve that
6 monopoly;

7 5, the commercial relationship between the
8 licensor and licensee, such as whether they are competitors
9 in the same territory, in the same line of business, or
10 whether they are inventor and promoter;

11 6, the effect of selling the patented specialty
12 and promoting sales of other products of the licensee, the
13 existing value of the invention to the licensor as a
14 generator of sales of his non-patented items, and the
15 extent of such derivative or convoyed sales;

16 7, the duration of the patent and the term of the
17 license;

18 8, the established profitability of the product
19 made under of the patents, its commercial success, and its
20 current popularity;

21 9, the utility and advantages of the patented
22 property over the old modes or devices, if any, that have
23 been used for working out similar results;

24 10, the nature of the patented invention, the
25 character of the commercial embodiment of it as owned and

1 produced by the licensor, and the benefits to those who
2 have used the invention;

3 11, the extent to which the infringer has made use
4 of the invention and any evidence probative of the value of
5 that use;

6 12, the portion of the profit or of the selling
7 price that may be customary in the particular business or
8 in comparable businesses to allow for the use of the
9 invention or analogous inventions;

10 13, the portion of the realizable profits that
11 should be credited to the invention as distinguished from
12 non-patent elements, the manufacturing process, business
13 risks, or significant features or improvements added by the
14 infringer;

15 14, the opinion and testimony of qualified
16 experts; and

17 15, the amount that a licensor, such as the
18 patentee, and a licensee, such as the infringer, would have
19 agreed upon at the time the infringement began if both had
20 been reasonably and voluntarily trying to reach an
21 agreement; that is, the amount which a prudent licensee who
22 desired as a business proposition to obtain a license to
23 manufacture and sell a particular article embodying the
24 patented invention would have been willing to pay as a
25 royalty and yet be able to make a reasonable profit and

1 which amount would have been acceptable by a prudent
2 patentee who was willing to grant a license.

3 You may have heard all these factors referred to
4 as the Georgia-Pacific factors.

5 The '247, '954, and '839 patents are standard
6 essential patents and, that is, the LTE and/or 5G standards
7 cannot be practiced without infringing the patents.

8 Pantech agreed to grant an irrevocable license for
9 the '247, '954, and '839 standards essential patents on
10 FRAND terms and conditions.

11 Accordingly, you must ensure that your damages
12 award with respect to these patents reflects only the value
13 of the patented invention and not the additional value that
14 resulted from the patented -- from the patents' inclusion
15 in one of the standards.

16 In other words, you may not consider the success
17 of the standard itself in determining a reasonable royalty
18 for the asserted essential patents.

19 In addition, because Pantech committed to grant
20 licenses on terms that are fair, non-discriminatory, and
21 reasonable when assessing any royalty rate to be applied to
22 the standard essential '247, '954, and '839 patents, you
23 should not consider Georgia-Pacific Factors 4, 5, 8, 9, and
24 10.

25 A reasonable royalty with respect to the '247,

1 '954, and '839 standards essential patents cannot exceed
2 the amount permitted under Pantech's FRAND obligations.

3 No one factor is dispositive, and you can and
4 should consider the evidence that has been presented to you
5 in this case on each of these factors.

6 You may also consider any other factors which in
7 your mind would have increased or decreased the royalty
8 that OnePlus would have been willing to pay and the patent
9 holder would have been willing to accept, acting as
10 normally prudent business people.

11 When determining a reasonable royalty, you may
12 consider evidence concerning the amounts that other parties
13 have paid for rights to the patents in question or for
14 rights to similar technologies.

15 Comparable license agreements are one factor that
16 may inform your decision as to the proper amount and form
17 of the reasonable royalty award similar to the way in which
18 the value of a house is determined relative to comparable
19 houses sold in the same neighborhood.

20 Whether a license agreement is comparable to the
21 license under the hypothetical license scenario depends on
22 many factors, such as whether they involve comparable
23 technologies, comparable economic circumstances, comparable
24 structure, and comparable scope.

25 A license agreement need not be perfectly

1 comparable to a hypothetical license that would be
2 negotiated between the patent owner and accused infringer
3 in order for you to consider it.

4 If there are differences between a license
5 agreement and a hypothetical license, you must take those
6 into account when you make your reasonable royalty
7 determination.

8 You must perform your duties as jurors without
9 bias or prejudice as to any party. The law does not permit
10 you to be controlled by sympathy, prejudice, or public
11 opinion.

12 All parties expect that you will carefully and
13 impartially consider all of the evidence, follow the law as
14 I am now giving it to you, and reach a just verdict,
15 regardless of the consequences.

16 It will be your duty to deliberate and to consult
17 with one another in an effort to reach a verdict. Each of
18 you must decide the case for yourself but only after an
19 impartial consideration of the evidence with your fellow
20 jurors.

21 During your deliberations, do not hesitate to
22 re-examine your own opinions and change your mind if you
23 are convinced that you were wrong, but do not give up on
24 your honest beliefs because the other jurors think
25 differently or just to finish the case.

1 As I said, your verdict must be unanimous.

2 When you retire to the jury room following the
3 closing arguments of the parties to begin deliberating on
4 your verdict, you will take this -- these instructions with
5 you, as well as the exhibits that were admitted into
6 evidence.

7 The first thing you should do is select a
8 foreperson to guide you and direct you in your
9 deliberations.

10 If at any point during your deliberations you want
11 to recess, you should follow all of the instructions that I
12 have previously given to you about your conduct during the
13 trial.

14 And after you have reached your verdict, your
15 foreperson is to fill in the verdict form your answers to
16 the questions. You should not reveal your answers until
17 such time as you are discharged, unless otherwise directed
18 by me.

19 I will give you further instructions after the
20 conclusion of your service, but I will tell you that once
21 you are discharged, you're under no obligation to talk to
22 anyone about the case.

23 Any notes that you've taken during the course of
24 the trial are only aids to your memory, and if your memory
25 should differ from your notes, you should rely on your

1 memory and not on your notes.

2 Your notes are not evidence. And a juror who has
3 not taken notes should rely on his or her own independent
4 recollection of the evidence and should not be unduly
5 influenced by the notes of other jurors. Notes are not
6 entitled to any greater weight than the recollection or
7 impression of each individual juror about what the
8 testimony was.

9 If for any reason you need to communicate with me
10 at any time during your deliberations, you should give a
11 written message or question to the Court Security Officer,
12 who will bring it to me.

13 I will then respond as promptly as possible either
14 in writing or by having you brought back into the courtroom
15 so that I can address you orally.

16 I will always first disclose to the attorneys what
17 your question was and my response before I answer your
18 question.

19 All right. That completes the final jury
20 instructions.

21 At this time, the parties will present their
22 closing arguments to you.

23 We will begin with the Plaintiff, and they will
24 present the first part of their closing argument. Then the
25 Defendant will present its closing argument. And then,

1 finally, at the end, the Plaintiffs will have a very short
2 opportunity to present some final words.

3 All right. Mr. Fussell.

4 MR. FUSSELL: Thank you, Your Honor.

5 We would like to reserve 10 minutes of our time
6 for rebuttal. And if I could get a two-minute warning.

7 THE COURT: All right. Did you say two or 10?

8 MR. FUSSELL: Two.

9 THE COURT: Two.

10 MR. FUSSELL: Thank you. Sorry.

11 May it please the Court.

12 Ladies and gentlemen of the jury, I'd like to
13 start where I started on Tuesday and just give you a
14 sincere thank you. We appreciate your attentiveness and --
15 and time and commitment that you've made to this case.

16 Today, we stand at a crossroads where your
17 decision will not only impact the parties in this case but
18 will also impact the principles of equity and fairness as
19 it relates to the marketplace, the value of Pantech's
20 patents, and the FRAND commitment.

21 You've heard from both parties and the evidence of
22 the case, and this morning I would like to go through some
23 of that key evidence.

24 At the beginning of this trial, I told you that
25 comparability was going to be key. I showed you a

1 comparison based on, like, a house when you're comparing
2 the price of a house. And you've heard that reference
3 throughout the trial now.

4 I want to come back to that analogy and show you
5 where we are now -- where we are on our street now. Each
6 of these houses --

7 If I could get the next slide, please?

8 Each of these houses represents each of the
9 license agreements that you've heard about throughout this
10 case and each of the license agreements that have been
11 analyzed to show comparability.

12 But before we dive into that comparison, I want to
13 go back and talk a little bit more about the technology.

14 Let's recall that this case revolves around four
15 specific patents. Pantech is not merely claiming value of
16 its inventions. It is asserting its rights to reasonable
17 compensation for the essential technology that its patents
18 cover.

19 Dr. Lopez, if you recall, he said that patents
20 aren't all equal. He said some are super. Some are
21 foundational.

22 And you heard the testimony of Professor Cooklev.
23 He's the only technical expert you heard from that
24 addressed the standard essential patents. And he explained
25 to you how these patents are fundamental to wireless

1 communication.

2 You heard from -- Mr. Cooklev explain, for
3 example, the '247 patent and how every time a phone
4 receives data on the 5G network, that patent is used. And
5 that patent, if you recall, is not even in the license
6 agreements that Dr. Lopez used for his comparability
7 analysis.

8 Like Professor -- likewise, Professor Cooklev
9 explained that the '839 patent is also used every time a
10 phone sends data in the 4G network.

11 And the '954 patent, it is used every time -- in
12 every case to increase band rate -- bandwidth in both the
13 4G and 5G networks.

14 But, remember, this is also Pantech's asserting
15 the '654 patent, the UI patent, if you recall. This patent
16 is not subject to FRAND, and it is commercially essential,
17 as you heard from the evidence.

18 Mr. Mauro, a leading human factors engineer,
19 explained how the '654 patent is commercially essential by
20 solving nine problems in the field of GUI design. The
21 invention of the '654 patent is used across various apps on
22 your phone in multiple dimensions. It's not limited to
23 some single feature, as the Defendants would like you to
24 believe.

25 OnePlus ignores the technology that makes these

1 phones successful and attempts to decrease the amount that
2 it owes Pantech for infringing its patents without
3 permission.

4 Dr. Lopez believes that this technology is only
5 worth -- you heard him on the stand -- this fundamental
6 technology is only worth \$90,000. 90K for years of
7 infringing these foundational patents, these patents that
8 your phone wouldn't even operate properly if it wasn't for
9 the technology in these patents.

10 But Dr. Lopez didn't even follow all the steps
11 that he told you were necessary. Everyone agrees that the
12 licenses that we've looked at are portfolio licenses. But
13 you need to apportion the rate for each of the patents out
14 of those portfolio licenses.

15 This is Dr. Lopez's slide here. He admitted that
16 he didn't do any apportionment on the Apple and Samsung
17 agreements for any of the patents. And, remember, this
18 '247 patent that he provides a rate for from the Apple
19 agreement, that patent is not even covered by the Apple or
20 Samsung agreement.

21 Instead, he just used the rates for the whole
22 portfolio to calculate these rates that you see here on the
23 screen. But this is wrong. Dr. Lopez ignores this
24 critical step -- this critical step of apportionment that
25 the Judge just instructed you is required to get the rate

1 that's required in this case.

2 Instead, Dr. Putnam, he calculated apportionment
3 for you using his forward citation analysis, which you see
4 here. He explained that this methodology goes back to the
5 1990s to value patents. He told you that economists have
6 conducted many studies, hundreds of studies, he said, to
7 confirm that the number of forward citations correlate to
8 value in patents.

9 Further, Dr. Putnam told you that for the forward
10 citation analysis, you should consider the families, not
11 the patents themselves. And the reason for that is because
12 the forward citation analysis relates directly to the
13 specification. And family members in patents all share the
14 same specification.

15 So you may ask yourself, why aren't they
16 apportioning the rate? Why aren't they following the
17 rules? OnePlus came into this trial with one goal, to
18 minimize what they should pay Pantech for infringing on
19 their patents.

20 So with that goal in mind, OnePlus pieced together
21 an argument to support this narrative. They put blinders
22 on every time they looked at the evidence, even when it was
23 uncontested facts.

24 One thing they overlooked was the top-down
25 approach. OnePlus criticizes Pantech for its top-down

1 approach.

2 If you recall from Dr. Jung's testimony, that was
3 the approach that Pantech used to come up with their truly
4 essential rate, the .71 percent. He looked at each of the
5 factors that are consistent with the methodology for the
6 top-down approach. This is widely accepted.

7 [REDACTED]
8 [REDACTED].

9 If we could show the testimony here from Mr. Xiao.
10 (Videoclip played.)

11 Q. [REDACTED]

12 [REDACTED]

13 A. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 (Videoclip ends.)

23 MR. FUSSELL: So you heard it right from Mr. Xiao,

24 [REDACTED] But did

25 you hear any top-down approach from OnePlus in this case?

1 Did you hear Mr. Lopez perform a top-down approach? Did he
2 even criticize Pantech's approach or methodology? No.

3 Dr. Lopez ignored that analysis. He overlooked
4 these facts.

5 Dr. Lopez also overlooked other critical facts.
6 The agreements with Apple and Samsung encompass only those
7 Pantech, Inc., patents. There were over 200 patents that
8 Pantech owns that are not even covered by the Apple and
9 Samsung agreements, and he completely ignores that.

10 He doesn't even address the fact that the '247
11 patent was part of that 200 and not covered by the Apple
12 and Samsung agreements.

13 And what else? You heard these agreements were
14 negotiated under different circumstances.

15 Go to the next slide, please.

16 These agreements were under different
17 circumstances with a different scope, making them
18 fundamentally different than what Pantech is seeking here.

19 You heard testimony from Mr. B.J. Kim. At the
20 time, Pantech, Inc., a different Pantech company, had owned
21 the patents, they were under financial duress.

22 They were --

23 If you go to the house slide, please.

24 They were like the houses on the far left here
25 that you see. These houses were in foreclosure. You heard

1 from Mr. Kim, he said that they were on the verge of
2 bankruptcy. That situation is completely different from
3 the hypothetical arm's length negotiation that you're
4 required to do to come up with your established rate in
5 this case.

6 Now, let's look specifically at that Samsung
7 agreement that Dr. Lopez relies on.

8 Dr. Lopez agrees in his analysis that he ignored
9 the \$45 million that Samsung invested in Pantech. He
10 doesn't even think ownership doesn't get you a sweetheart
11 deal. Even worse, neither [REDACTED]
12 [REDACTED] to Pantech's patents when they entered into that
13 agreement.

14 Do you recall, [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED].

19 This was disclosed specifically in this -- in the
20 agreements that you saw, and so Apple and Samsung knew when
21 they entered into those agreements they [REDACTED]
22 [REDACTED]
23 [REDACTED].

24 What you should be asking yourself is why did
25 Dr. Lopez overlook these critical facts?

1 But that's not all. There's also another thing he
2 overlooked.

3 You heard the importance of some of the factors to
4 be considered when you come up with your royalty rate.

5 Now, ask yourself, what is one of the things that
6 you would like to see when you're asking yourself, what is
7 this royalty rate we should come up with? How about how
8 much OnePlus has paid for similar technology?

9 You know, when we asked Dr. Lopez if he had ever
10 seen any OnePlus license agreements covering 4G and 5G
11 technology, do you remember what he said? His excuse was,
12 well, first of all, it was -- OnePlus is a new company.

13 But we know that's not the case. OnePlus was
14 started in 2013. They're not new. And when he's pressed
15 on that, when Mr. Tidwell pressed him on that, what did he
16 say? He said, oh, well, it's complicated. There's
17 confidentiality issues.

18 Well, as we pointed out about that, too, all these
19 license agreements are complicated. We had to seal the
20 room. Everybody had to leave because of confidentiality
21 restrictions. That's just an excuse.

22 And one more important thing. Did you ever hear
23 Dr. Lopez say that he talked to anybody at OnePlus? Did he
24 say he talked to anybody at OnePlus to ask them if they had
25 any additional license agreements to cover the same

1 technology? Don't you think that would be an important
2 thing to ask?

3 Now, let's go back to that house slide again.

4 Dr. Lopez only wants you to focus on these two
5 foreclosed houses over here on the far-left side. But
6 let's take a look at these houses in the middle, the more
7 recent agreements made by the relevant Pantech entity in
8 this case. These agreements represent the reality of our
9 current market and provide more accurate reflection of the
10 licensed landscape of these infringed patents.

11 The agreements with GNJ, Coolpad, BLU, and Sony
12 are the only relevant agreements that cover all the patents
13 that are at issue in this case. Those are the only
14 agreements that cover all the patents.

15 Those are the comparable license agreements that
16 you should be considering when coming up with your royalty
17 rate.

18 Let's take these one-by-one. I want to start
19 first with GNJ.

20 You heard from Mr. Jung Pantech believes that GNJ
21 was selling a large number of 4G phones when they
22 approached them. It turns out they were mistaken. They
23 weren't.

24 So what did Pantech do? They did the fair thing.
25 They went to them and said, look, give us [REDACTED]

1 and we'll give you a license to our patents. And you know
2 what, if you start selling 4G and 5G, you're going to have
3 to pay our royalty rate. That's just being fair.

4 Turns out, they aren't doing that right now. If
5 they choose to, they bought the option, and they'll have to
6 start paying the rate.

7 The same thing goes for Coolpad. Pantech didn't
8 know Coolpad's future plans were to leave the U.S. market
9 when it entered into the agreement with them.

10 Again, this agreement was reached where they would
11 pay, and if they wanted to start using 4G and 5G, they
12 agreed. They have a contract. They start using that,
13 start selling in the United States, they got to start
14 paying the royalty rate.

15 Dr. Lopez tried to compare this to putting your
16 house for sale for \$5 million, if you will -- if you will,
17 like a list price. But that's not a fair comparison
18 because if I put my house for sale for \$5 million, that
19 doesn't mean anybody has to pay it.

20 But GNJ and Coolpad, they have a contract. They
21 have a contract for that house. If they want to move into
22 that house, they got to pay.

23 Then there's the BLU agreement. Dr. Lopez takes
24 issue with the BLU agreement and says it's not a fair
25 market rate. But BLU is actually paying the royalty rate

1 now. They are pay -- they've paid [REDACTED]
2 [REDACTED], and they're continuing to pay that rate.
3 That's -- it's definition of fair market value right there.

4 Finally, let's look at the [REDACTED] agreement. Sony
5 is no small player, and it paid [REDACTED]
6 [REDACTED]
7 [REDACTED] You just can't ignore
8 this.

9 And, in fact, Dr. Putnam, he analyzed this. He
10 told you, you look at [REDACTED]
11 [REDACTED] But Dr. Lopez,
12 he attempts to just sweep this under the rug.

13 He says, well, [REDACTED]
14 [REDACTED] So they must not have been worth much.

15 Well, that's not exactly the full truth, though,
16 because you heard from Mr. Jung, they submitted five --
17 they submitted 10 patent families. And Dr. Jung has a
18 Ph.D. in electrical engineering. He got to review those 10
19 patent families and pick the five best. So it's not true
20 that they -- that [REDACTED] had all the input in those patents.

21 Dr. Lopez also tries to downplay this agreement by
22 saying, well, it covers all of [REDACTED] Maybe it
23 covers -- maybe they'll start making a [REDACTED] or a TV
24 that has -- has cell communication in it.

25 But did you hear any evidence -- any evidence from

1 that witness stand that says anything about a [REDACTED]
2 that practices any of Pantech's patents? No, you didn't.

3 Let's go to the house slide again.

4 So that leaves us with one house left on our
5 street. This house on the far right you see here. This
6 one is all prettied up. It's been renovated a little bit.
7 Those are the updates that reflect the discounts that
8 Pantech has provided in its license agreements.

9 We know that OnePlus must pay no less than a
10 reasonable royalty. That's the bottom. That's the floor.
11 I talked to you about that in the opening statement.

12 But we also know that the license agreements that
13 are at issue here, those license agreements had uncertainty
14 built in. They had discounts built in. And those
15 discounts don't apply anymore. Those discounts -- there
16 has been a determination that OnePlus infringes, and,
17 therefore, those discounts no longer apply.

18 Next slide, please.

19 What we've done here is we've done the math for
20 you. We assessed those discounts for you that you heard
21 about from Dr. Jung and you heard about from Dr. Putnam.

22 THE COURT: Mr. Fussell --

23 MR. FUSSELL: Yes.

24 THE COURT: -- you have two minutes remaining.

25 MR. FUSSELL: Thank you, Your Honor.

1 Simply put, if you take the top-down rate that
2 they came up with, the .71 percent, and you divided it by
3 their established rate, the .5 percent, you get a 1.42
4 multiplier. It's simple math. And that multiplier takes
5 out the discount. And when you apply that to the rate
6 here, the 836,000, the true amount that they should pay is
7 1.187 million.

8 The same is true with respect to the non-SEP.
9 That rate, if you recall, was -- the established rate was
10 .25 percent, and they discounted that for their early
11 adopters at .15 percent. That comes to a multiplier of
12 1.67, and that's the amount you should -- you should tack
13 on to the -- to the rate, as well, to go from 294,000 to
14 490,000. Giving you a grand total of 1.678 million.

15 So we're at the end of the street now. It's up to
16 you to decide the fair value of the house.

17 I want to thank you for your time. We'll reserve
18 the rest of our time. You'll hear from my colleague,
19 Mr. Culbertson. But I want to thank you again. Thank you
20 for your attention. Thank you for indulging us. And thank
21 you for your service.

22 MR. AIRAN: Your Honor, may I have a five-minute
23 warning, please?

24 THE COURT: Yes, you may.

25 MR. AIRAN: May I proceed?

1 THE COURT: You may.

2 MR. AIRAN: Your Honor, ladies and gentlemen of
3 the jury, good morning.

4 This is a case about what OnePlus owes Pantech for
5 the use of its patents. You are being asked to determine
6 the fair, reasonable, and non-discriminatory rate that
7 OnePlus should pay in this case.

8 There are only two questions that you'll have to
9 answer today. The first is the SEP rate. The second
10 relates to the non-SEP patent.

11 Now, when it comes to the SEP rate, the Court has
12 instructed you as follows. You heard that. It was a very
13 long list of instructions that the Court gave you, but
14 you're going to have those instructions back in the jury
15 room.

16 And I want you to pay specific attention to
17 Section 5.1, and this is repeated in a couple of different
18 places in the jury instruction. But that says: A
19 reasonable royalty as to the '839, '247, and '954 standard
20 essential patents cannot exceed the amount permitted under
21 Pantech's FRAND obligations.

22 So that sets your bar right there. You can't go
23 above that. That's what the Court is instructing you here.

24 And there's a reason that Pantech is obligated to
25 license on FRAND terms. This is a slide here that they put

1 up -- that Pantech put up on opening. It's a two-way
2 street, fair, reasonable, and non-discriminatory. We agree
3 with that. That's what FRAND is.

4 Pantech asserts that these patents are standard
5 essential, and that must mean they're used for 4G and 5G.
6 When you read through the instructions again, what
7 Judge Schroeder instructed you is do not take into account
8 the fact that the standards are successful.

9 The job here is to figure out the value of the
10 patents that make up the standard, and there are thousands
11 upon thousands of these patents.

12 Here, we're talking about three SEP patents.

13 FRAND is important because it keeps the playing
14 field level. Everybody pays the same rate. When Pantech
15 bought these patents, and you heard about that through
16 Mr. Jung, when Pantech bought these patents, they were
17 already encumbered. They already had [REDACTED] and
18 [REDACTED] stick with the patents. They're sticky.
19 They go along with the patents.

20 And what FRAND means is that every player that
21 enters the market gets the same rate.

22 Again, when I asked Mr. Jung about that, he
23 said -- I asked him: So you understand that the patents
24 when you bought them were encumbered [REDACTED]
25 [REDACTED]; is that correct?

1 He answered: Yes, that's correct.

2 Pantech wants to retrade that deal. That deal was
3 done before Pantech even bought the patents. Now wants to
4 say I don't want to pay any attention to what happened
5 before. I don't want to consider these [REDACTED]
6 [REDACTED].

7 And one thing that occurred to me when I was
8 sitting here listening to Mr. Fussell in his opening is he
9 put up that picture of houses. Remember that? Again and
10 again he put that up.

11 Well, if you look at the houses on the end, that's
12 supposed to indicate Apple and Samsung. Does anybody think
13 that Apple and Samsung are those raggedy old houses on the
14 block? Of course not. Those are the best houses on the
15 block, and they were [REDACTED]. That's the
16 fact here.

17 So Pantech here wants to retrade on the deal that
18 they already did.

19 Now, we're here today because we need your help.
20 We need your help to decide what the FRAND rate is.
21 Pantech owes well over -- owns well over a thousand
22 patents, but only four are at issue here. We agree that we
23 should pay for use, but Pantech is seeking in this case a
24 rate that is higher than FRAND.

25 There are two theories of damages in this case.

1 Both parties have highly-educated and skilled economists.
2 You saw them. Their credentials are impressive on both
3 sides. But these experts have set the bracket. They've
4 set the bracket. That's the evidence you've heard.

5 You've got 90,000 on the one hand. You've got
6 1.13 million on the other. These royalty amounts may seem
7 low given what you've heard in this trial, but you need to
8 keep in mind that we're talking about smartphones that have
9 thousands upon thousands of features. There are thousands
10 upon thousands of SEP patents.

11 And what we're talking about here is damages or
12 calculation of payments for the amount due for just U.S.
13 patents for only past sales, and we're only talking about
14 three SEP patents and one non-essential patent.

15 When you ignore the arguments made by the
16 attorneys, this is the -- that is the only economic range
17 that is supported by the evidence. Again, the instruction
18 at 5.1 tells you that the reasonable royalties cannot
19 exceed the amount permitted by Pantech's FRAND obligations.

20 Let's turn now to Pantech's theory.

21 Pantech points to these four licenses, to BLU,
22 GNJ, Sony, and Coolpad. And it attempts to confirm its
23 desired 0.65 program rate by pointing to these licenses.

24 Starting first with Sony, we're talking about a
25 license to all of Sony's patents. Right? This is all of

1 them, all 1,600 patents. It's now up to 1,800 patents.
2 Sony has that. Sony has all of those patents. And they
3 paid [REDACTED] for it.

4 Now, one thing I -- it may have gone over pretty
5 quick when you were listening to the testimony, but
6 Mr. Jung agreed that the Sony license has this clause:

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 That's a contract. That's what they agreed to.
14 And it says [REDACTED]

15 [REDACTED] But that's what they're doing here. You
16 heard Mr. Fussell just moments ago saying look at how great
17 this Sony license is. But they agreed in that contract
18 that they wouldn't do that.

19 Remember when I asked Mr. Jung about that, he
20 said, well, I'm not a lawyer. I don't understand that.
21 That's plain. That tells you he shouldn't be doing it.
22 They know they shouldn't be doing it. Mr. Jung doesn't
23 like his number. He doesn't like the number he's stuck
24 with. That's why he's ignoring the Sony agreement.

25 If you do consider this agreement, though, let's

1 take a look at the [REDACTED] that Mr. Fussell
2 was mentioning.

3 If you're trading cards and someone says to you,
4 hey, I'd like to have five of your cards, but you've got to
5 pick them out of 10, are you going to give them your best
6 10 and say, here, pick from among my best 10? Of course
7 not. You're going to look through your playing cards and
8 give them the ones that are the worst 10, and then they can
9 pick the five out of that, and that's what happened here.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED].

15 The only concrete value here is cash. Cash talks,
16 right? Everybody knows cash talks. That's the only thing
17 that mattered here. And it was [REDACTED] for a license
18 to use every patent in Pantech's portfolio, which is around
19 1,800 patents.

20 Let's take a look at BLU. Like Sony, Pantech also
21 sued BLU. It sued them, and BLU settled that litigation in
22 2021 by paying [REDACTED], in addition to a [REDACTED] future
23 license agreement.

24 The back payment that they're talking about, the
25 [REDACTED]

1 So they didn't use their standard rate when it came to BLU.

2 In fact, I asked Mr. Jung about this again.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 That's what he answered.

11 Now, neither Pantech nor Dr. Putnam calculated
12 that discount, but Dr. Lopez did.

13 He calculated the actual rate for the BLU license
14 to be [REDACTED] percent. That's more than [REDACTED] times less than
15 their program rate. This is like going to buy fireworks at
16 a fireworks stand. They give you a buy 1 get 5 free.

17 But to determine the actual price of a firework,
18 you have to add up your cost and then divide by six.
19 That's the price you're paying. You're not paying the
20 standard rate. You're getting five free. You're getting
21 six fireworks for one price, and that's what happened with
22 BLU.

23 Next is the Coolpad license. We know Coolpad left
24 the market.

25 Now, Coolpad, what did they pay? Well, like Sony

1 and BLU, Coolpad was sued by Pantech. And what Dr. -- or
2 Mr. Jung, I'm sorry, admitted is that Coolpad paid less
3 than [REDACTED] for its license.

4 Now, Coolpad going forward, Mr. Fussell said,
5 well, they -- they'll have to pay if they go forward.
6 There's no indication that Coolpad is going forward here.
7 They're not going forward. They agreed to pay less than
8 [REDACTED] in order to get out of this lawsuit. They said
9 we're done. We're exiting the market.

10 Finally, let's take a look at the GNJ license.
11 GNJ paid [REDACTED] for its license. It's like a
12 parking ticket when you're talking about companies like
13 that. That's it. They paid [REDACTED] and they,
14 too, got out of the market. There's no significance to
15 this GNJ license whatsoever.

16 And, again, it's important that GNJ was leaving
17 the market at the time that they agreed to these licensing
18 rates. They were -- they never intended to pay those
19 rates. So they say, okay, well -- you know, they agreed to
20 pay the rates. Well, they were never going to pay them so
21 that's completely irrelevant.

22 So how did Mr. Jung determine his rate? Well,
23 when I asked him that question, I said: You set aside the
24 Apple and Samsung rates and then moved forward with your
25 own rate after you bought the patents; is that fair?

1 Answer: I think that would be fair.

2 What Mr. Jung wanted was a reset. He wanted to
3 retrade the deal. He wanted to ignore everything that
4 happened before, ignore everything that happened with Apple
5 and Samsung, and then just do his own deal, and that's what
6 he did here.

7 Now, no licensing expert would ignore [REDACTED]
8 75 percent of the market, but that's exactly what Mr. Jung
9 and Pantech did. The program rate here is supposed to be
10 for all of the portfolio license, but this case only
11 involves three patents.

12 So what did Dr. Putnam do? Well, Dr. Putnam did
13 his family citation, right? We heard about that, heard
14 about that through several witnesses.

15 So what he did is he counted members of the
16 family, and then he said the '247 patent, well, that's
17 worth the greatest number of citations.

18 Think about that for a minute, if you're counting
19 families. Some of you may know wealthy relatives, right?
20 Does that make you wealthy? If I count my wealthy
21 grandpa's wealth, does that make me wealthy? Of course
22 not. Everybody knows someone that's wealthy that's in your
23 family. But that doesn't mean that the poor relations are
24 worth the same amount as the wealthy relations.

25 But that is exactly what Dr. Putnam's analysis

1 was. He counted up all the wealth of the family and then
2 assigned it to the '247 patent. That's not a good
3 methodology.

4 Using the result of his counting, he did some math
5 and he came up with some rates, .075 percent rate that he
6 said should be applied for the '247 patent.

7 He did a similar kind of family analysis for the
8 '839 and '954 patents. And then he determined some rates.

9 But that's where his analysis really stopped. He
10 showed you these four licenses and then created this rate
11 and said, look, based on these four licenses, everybody --
12 everybody should be paying that.

13 But this approach does not account for Apple and
14 Samsung. What did they do with Apple and Samsung? Well,
15 they put their head in the sand.

16 Again, Mr. Jung said he wanted to forget about
17 what happened in the past. He wanted to set his new rate
18 going forward. He didn't like -- he bought the patents,
19 they didn't like the rates, so they just ignored them.

20 So Apple and Samsung, they account for about 50
21 percent of the market. That's -- that's what we're talking
22 about here. That is the market rate. Probably most of you
23 have either an Apple or Samsung phone. You've probably
24 never even heard of OnePlus.

25 But that's the rate. The rate is set by more

1 than -- more than 75 -- about 75 percent of the market. I
2 shouldn't say more. It's about -- it's about 75 percent of
3 the market. But that is the market rate. That's what
4 people pay. That's what Apple and Samsung paid. And
5 they're the best houses on the block.

6 Everyone agrees that Apple and Samsung were not
7 considered when Pantech negotiated the four licenses that
8 we're talking about here.

9 For the first time, you, as a jury, will determine
10 what effect the [REDACTED] have on the
11 Pantech rate. That's your job to determine.

12 And when Apple and Samsung are considered, the
13 picture changes dramatically. You can think about it. We
14 put this up thinking, you know, maybe this will help you
15 understand what's going on here.

16 You got these big ole magnets on this side for
17 Apple and Samsung pulling the number down to the left side.
18 And then you've got these four little magnets on this side
19 that they want to point to. And they say -- they're
20 pulling that number way up to 1.13 and even higher, but
21 that's not reality here.

22 The reality is the market rate was set by Apple
23 and Samsung. When you take everything into account, and
24 you should take into account Apple and Samsung, [REDACTED]

25 [REDACTED]

1 And when you tally up the damages, as you're going
2 to do later today, the total damages amount should be in
3 the neighborhood of \$100,000, not more than 1 million.

4 Now, Pantech is in the business of buying and
5 licensing patents. I asked Mr. Jung about that. He said
6 yes.

7 Is your primary business in acquiring and
8 licensing patents.

9 He said: Currently, yes.

10 Now, I want to be clear. There's nothing wrong
11 with that. You can buy patents, and you can license them.
12 That's not a problem. But a savvy corporation like Pantech
13 that buys and licenses patents knows what it's doing. It
14 knows that it's buying these patents subject to prior
15 licenses.

16 Mr. Jung testified that when he bought this patent
17 portfolio, they were already aware of [REDACTED]
18 [REDACTED] they knew about them. Again, they just want to
19 ignore them. They want to retrade the deal.

20 Now, Dr. Putnam saw what Apple and Samsung did in
21 his work on this case, and he offered several excuses for
22 why they ignored them.

23 First was economic duress. But as the Judge
24 instructed you, that FRAND obligation is irrevocable.
25 There's no way to get out of that. Even if there was some

1 duress, there was no way to get out of it. They signed
2 that deal. That first excuse of duress doesn't hold water.
3 These are sophisticated companies. They knew what they
4 were doing. [REDACTED]

5 Next Dr. Putnam said that Apple and Samsung did
6 [REDACTED]. You
7 heard that on opening again.

8 But that argument makes no sense. Why would [REDACTED]
9 [REDACTED] that they didn't need? In fact,
10 that [REDACTED] expired. Apple knew it. Pantech
11 knew it. [REDACTED]
12 [REDACTED]. That second excuse also doesn't hold water.

13 And the third excuse is that they weren't an arm's
14 length transaction.

15 But Pantech and Samsung were embroiled in a
16 lawsuit. They sued -- Pantech sued Samsung just like they
17 sued OnePlus. [REDACTED]

18 [REDACTED] why would they sue them? Of course, [REDACTED]
19 [REDACTED]. So that final excuse is no better than
20 the other two.

21 So let's talk about the Apple and Samsung rate for
22 a moment. Dr. Putnam did not calculate a rate for Apple
23 and Samsung. But Dr. Lopez did the work. Dr. Lopez
24 actually did the work.

25 And he unpacked these deals. He determined that

1 the effective rate for Samsung is this [REDACTED] - or, I'm
2 sorry, [REDACTED] for Samsung and [REDACTED] for Apple. And it's worth
3 recalling that [REDACTED]

4 [REDACTED]

5 So if we're talking about their houses at the end
6 of the block, the ones that they want you to believe are
7 the raggedy old houses, this is more than a year after the
8 fact, and they also did their deal with Samsung at about
9 the same rate.

10 You can see the rate difference there. It's [REDACTED]
11 percent difference. That's the market rate. That's what
12 they gave Apple. That's what they gave Samsung. That's
13 the established rate in this case.

14 Now, again, retrading the deal. What's going on
15 here? Well, when we look at Apple and Samsung, you can see
16 that, on this demonstrative, my colleague, Mr. Thompson,
17 showed you this demonstrative on opening, and you can see
18 that the rate that's charged for the sales of Apple and
19 Samsung versus the rate that they're seeking for OnePlus is
20 a huge, huge mismatch.

21 They're seeking a rate, as Dr. Lopez explained,
22 that's [REDACTED] times greater, [REDACTED] times greater is what they
23 want from OnePlus than what they acquired when they bought
24 the patents from what Pantech had done.

25 They want to retrade the deal.

1 Now, Mr. Fussell, when he was wrapping up his part
2 of the opening, he brought in this slide, and I want to
3 talk about that for minute.

4 This slide was never shown to you during -- during
5 testimony. No expert testified about this. No fact
6 witness testified about this. You're seeing this slide for
7 the very first time right now.

8 Why is that? Ask yourself that question when
9 you're deliberating. Why did they pop this slide in in
10 closing argument? This is what the attorneys want you to
11 see. This is not what any expert has bought on to.

12 Dr. Putnam was on the stand. He was probably the
13 longest witness on the stand. Did he present this slide?
14 No. Why do you think he didn't present that slide? He
15 doesn't believe in it. No economic expert believes in this
16 slide.

17 This is attorney argument. These are the
18 attorneys saying you ought to pay more. You don't have to
19 pay attention, as Judge Schroeder explained, to attorney
20 argument.

21 Let's keep focused on what the economic reality is
22 here. The economic reality is what the experts testified
23 to.

24 So Dr. Putnam gave us his highest number. They
25 don't like it. And now they want you to jack up the rate.

1 And you might remember that Dr. Putnam actually
2 said repeatedly in his testimony that one of the purposes
3 of FRAND is not to jack up the rate. He said -- he said
4 that, right, you remember that? He didn't want you to jack
5 up the rate. But that's exactly what the lawyers now want
6 you to do. Dr. Putnam said you shouldn't do it. The
7 lawyers are saying you should do it.

8 Now, this is where it gets interesting.
9 Dr. Putnam testified yesterday, you heard him, so this is
10 still probably fresh in your mind, but when he was
11 explaining FRAND, it's that last sentence there that really
12 caught my eye. He said non-discriminatory means that you
13 treat similarly situated people similarly.

14 Let's think about that for a minute, this is the
15 very definition of discrimination. Treating the big guys
16 in the market one way because they're big and then treating
17 the little guys in the market a different way because
18 they're little. That is discrimination.

19 The non-discrimination principle is that you treat
20 everybody the same way, whether they're big, whether
21 they're small. That's non-discrimination. But that's not
22 the way Dr. Putnam sees it. He's got discrimination
23 exactly backwards. Discrimination is equal treatment for
24 all people. And I know that's a loaded word, but that's
25 what's going on here.

1 The new Pantech wants to take advantage of OnePlus
2 because they're smaller.

3 Let's move on now to the specific questions that
4 you have to answer.

5 So Question 1 on your verdict form asked for a
6 dollar amount. And we're here because we need your help on
7 that. OnePlus is willing to pay a fair, reasonable, and
8 non-discriminatory rate to license these patents, but it
9 should not have to pay a rate that's [REDACTED] times more
10 than what the predecessor licensed Apple and [REDACTED] for.
11 That's just not fair.

12 So when you look at all of the evidence and you go
13 back and consider all of the evidence, what Dr. Lopez
14 explained is that about \$78,000, if you apply Apple and
15 Samsung, that's the rate -- that's the number you ought to
16 put in for Question No. 1.

17 You should not take into account this evidence
18 based on GNJ, BLU, Coolpad, and Sony to the exclusion of
19 Apple and Samsung. And that's what they want you to do.
20 Ignore the left side entirely. Just focus on this right
21 side and give us that number.

22 And then they're asking for more. That's the
23 crazy part. They're saying that's not even enough. Let's
24 give it some kicker, and that's not appropriate.

25 Again, the jury instructions tell you FRAND is the

1 maximum. These are the guideposts. These are the economic
2 experts. These are the brackets. This is what the
3 economic experts say.

4 So you're not -- you shouldn't go above what
5 they're asking here for, 836,591. And you shouldn't ignore
6 Apple and Samsung. Those are very powerful magnets pulling
7 that number down -- all the way down.

8 Now, let's -- just real briefly I want to touch on
9 what Mr. Fussell said about Dr. Cooklev. One thing that
10 occurred to me, and you may have forgotten this already.
11 It was late in the day on Tuesday when Dr. Cooklev
12 testified. But at the end of the day, he just wouldn't
13 answer direct questions.

14 You might remember my colleague, Mr. Filbin,
15 asking him a simple technical question, and he paused. He
16 went on tilt or something. He wouldn't answer the
17 question.

18 And so my colleague Mr. Filbin said: I'll take
19 your silence as a no.

20 He said: Well, as I said, it seems to me the
21 question is related to technical issues that were not part
22 of my direct testimony.

23 So he wouldn't answer a technical question unless
24 his lawyer asked him that question. Think about that for a
25 minute. What does that say about their technical -- about

1 the technical value of the patents and whether they're
2 worth more than what -- than what they licensed Apple and
3 Samsung for?

4 So if you add up all the royalties for the SEP
5 patents, as I said earlier, that number comes to 78,000.
6 And, remember, this is only -- again, that seems small. I
7 know that seems small. Remember what we're talking about
8 is just U.S. sales, only for past damages, and only for
9 three patents.

10 So that's the right number here.

11 Turning to the second question that you're going
12 to be asked, this is a difficult question to parse out.
13 That's because it's not a standard essential patent. It's
14 never been valued before.

15 And they produced an expert, Mr. Mauro, to testify
16 about that. He had a video -- they didn't show you on
17 direct. I showed you the video on cross-examination.

18 And you may remember that what he said the use
19 case was here is when you use your phone and you click on
20 a -- on the search -- or the settings button, that pop-up
21 came up. And he said the advantage was when the screen
22 locks out, that pop-up goes away. That's what they claim
23 to be the valuable patent here, that pop-up going away on
24 lockup screen.

25 Well, if you clicked anywhere else on the screen

1 when the phone was active, that pop-up would have gone away
2 anyway. Right? There's no particular advantage.

3 He talked about the problem -- or the patent
4 solving nine problems. These involved rapid display of
5 information. Remember that? I took you through that.
6 There's nothing rapid about waiting for your lock screen to
7 clear a pop-up. So this patent isn't very valuable either.

8 And we have to keep this in mind. You have to
9 keep in mind what's going on here with the '654 patent.
10 This is one feature. Dr. Lopez explained that there are
11 thousands of features in -- in any smartphone.

12 Mr. Mauro explained that there are millions of
13 features in these applications. That's why people buy
14 phones. You're not buying a phone. You're not buying a
15 OnePlus phone because if you don't use it, a pop-up that
16 was previously on the screen goes away. That's not why
17 you're buying a OnePlus phone. There's no evidence in this
18 case whatsoever that that feature, that that '654 patent,
19 is in any way driving any sales of OnePlus phones.

20 Indeed, Mr. Mauro admitted when I asked him --
21 after awhile, he finally admitted it: Is there a
22 quantitative measurement that you can present to the
23 jury -- quantitative, meaning numbers -- that would assess
24 the value of the '654 patent?

25 And he said: No, there's not.

1 So what are we talking about for the value of the
2 '654 patent? Well, what Dr. Putnam finally got around to
3 saying -- he didn't say this on direct. What he finally
4 got around to saying on cross-examination was: Well, he
5 equated the '654 patent with the '247.

6 How did he get there? Did anyone say that?

7 You heard from Dr. Cooklev. Dr. Cooklev said: I
8 didn't talk to Dr. Putnam about the '247 patent and the
9 '654 patent or do any comparison.

10 You heard from Mr. Mauro. Mr. Mauro said: I
11 didn't talk to Dr. Putnam about the -- equating the '654
12 and the -- and the '247 patents. Neither of those experts
13 talked to Dr. Putnam.

14 So where did he get this number from? Where did
15 he get this number? I'm just going to say the '654 patent,
16 which relates to lockout screens and a pop-up, that I'm
17 going to equate that to the most valuable standard
18 essential patent.

19 THE COURT: Mr. Airan, you have five minutes
20 remaining.

21 MR. AIRAN: Thank you, Your Honor.

22 So that -- that's unsupported testimony. That's
23 not a rigorous analysis. That's no analysis at all. He
24 just made that up. He said: I'm going to take the '654
25 patent and say it's the same thing as the most valuable

1 '247 patent in this case.

2 That's not a reasonable analysis.

3 So, again, when we take a look at what's going on
4 here for the '654 patent, which is a non-essential patent,
5 we think it's appropriate to look at the Apple and Samsung
6 licenses, again, as part of a whole.

7 Take a look -- we're going to tell you, take a
8 look at their licenses, take a look at BLU, GNJ, Coolpad,
9 and Sony, but don't ignore Apple and Samsung. These are
10 the licenses that were in effect at the time that Pantech
11 bought those patents. They knew they were encumbered by
12 it. They can no longer retrade that deal.

13 And so when you look at that -- when you look at
14 all of this evidence in totality, Dr. Lopez did a
15 calculation there for the '654 patent, and he concluded
16 that if you apply these rates, these Apple and Samsung
17 rates, to the OnePlus sales base, you get a \$12,508 amount
18 for the use of the '654 patent.

19 So, in conclusion, one thing I want to point out
20 is that these rates, Mr. Fussell mentioned this, he said
21 they didn't do a further apportionment down. That's --
22 he's complaining that these rates are too high, that this
23 number should actually have gone down. And what Dr. Lopez
24 did was conservative.

25 So he said, fine, I'm just going to give you the

1 whole value. I'm not even going to try to apportion down.
2 I could, I could knock those numbers down. I'm not going
3 to do it. I'm just going to give you the [REDACTED]
4 for Apple and Samsung for each patent.

5 And that's summarized here on this screen. And
6 when you add them up, it's about \$78,000 for the SEPs, and
7 it's about \$12,500 for the non-essential patents. And
8 those are the numbers we're going to ask you to put into
9 the jury verdict form.

10 As we bring this case to a close on behalf of the
11 entire OnePlus team, we thank you for your time and
12 attention. You're doing important work here, and both
13 parties appreciate your time and attention to this matter.
14 We need your help to get to a resolution of this. That's
15 what you're doing. That's what you're going to go back and
16 deliberate on.

17 And we thank you for your time here today.

18 THE COURT: Thank you, Mr. Airan.

19 MR. CULBERTSON: Your Honor, may I have a
20 three-minute warning, please?

21 THE COURT: Yes.

22 MR. CULBERTSON: Thanks very much. May it please
23 the Court.

24 Ladies and gentlemen, the good news for you is I'm
25 batting clean-up, and I don't have much time. So the case

1 is going to be in your hands very quickly.

2 Before I run out of time, and I will, I want to
3 thank you one last time. We appreciate your work. We
4 appreciate your commitment to this in helping us get this
5 case resolved.

6 Mr. Airan is a tough act to follow. He's -- he's
7 quite a speaker, but what I can tell you is there were
8 several things that just struck me because it makes me
9 wonder if we were in the same courtroom the last couple of
10 days.

11 I heard him say that Samsung sued Pantech. That's
12 not the evidence. It was exactly -- or, excuse me, that
13 Pantech sued Samsung. That's -- it was just the opposite,
14 okay? Samsung sued Pantech, ladies and gentlemen. That
15 was the testimony from Mr. Kim.

16 I heard him say that we're picking on OnePlus
17 because they're smaller. You heard that Pantech has nine
18 employees. We're talking about a company that has more
19 than a billion dollars in sales just over the brief damage
20 period that we're talking about, just in the United States.
21 We're not picking on a small company here. We're going
22 after someone that's using our intellectual property.

23 You heard him say that there are thousands and
24 thousands of SEP patents. If that's true, and they're
25 selling 4G and 5G phones, how come they can't show us one

1 single license agreement where they are paying to use SEP
2 patents? It just doesn't add up.

3 Don't you know if they had one that was anywhere
4 close to the Apple or Samsung agreement with Pantech, Inc.,
5 that they keep beating their chest about, it would have
6 been front and center?

7 Don't you know that if Apple or Samsung's
8 agreements with Pantech, Inc., set the rate, as he said,
9 that we'd have a briefcase full of them to talk about in
10 this case? And you haven't seen a single one.

11 Now, if we could have PDX-7-29, please?

12 They're telling you that a reasonable royalty rate
13 is \$90,000. We heard that for the first time yesterday,
14 folks. That's based on a portfolio rate they say that
15 Apple got.

16 You've heard from day one, this is not a portfolio
17 case. It's a four-patent case, and the Judge instructed
18 you that damages are to be apportioned down, to the patent
19 level.

20 Dr. Lopez didn't do that. So we added the math
21 here in the last two columns using appropriate
22 apportionment provided by Dr. Putnam, who did do the
23 appropriate analysis. And if you -- if you -- if you
24 apportion down the damages in this case according to
25 Dr. Lopez, it would be \$7,200.

1 So why didn't he do that? Because neither he nor
2 any of these lawyers can stand up here with a straight face
3 and say that this case is worth \$7,000 when they've been
4 using our intellectual property for up to three years and
5 generated over a billion dollars in sales in infringing
6 phones. It doesn't add up.

7 And if you can't trust them to be straight with
8 you about that, to just put this artificial number that is
9 created contrary to the Court's instructions, how can you
10 rely on anything that they've told you throughout this
11 trial?

12 He just told you the BLU license isn't at the
13 standard rate. Go read it. It's Plaintiffs' 40, 41 or 42.
14 And it says [REDACTED] and the testimony is that not only
15 did they pay past damages, they've paid more than [REDACTED]
16 in future royalties at the [REDACTED] They're just --
17 they're just monkeying with the numbers.

18 If these patents are such low value, why are they
19 using them, okay? They know these patents are important.
20 They're important to improve their phones and the way they
21 perform on the networks.

22 They know that these patents allow them to compete
23 in the marketplace, and they've been competing with a
24 competitive advantage now for years because they're selling
25 the phones without paying for the technology that they're

1 using. And they like that advantage. They've been
2 boasting about their growth and are enjoying great success.
3 That's why they don't want to pay what's fair.

4 And so if you think about phones these days,
5 right, you think about how important these are. We don't
6 just talk on them. We sit here and we work on them. We do
7 email. We download entertainment. We communicate through
8 different forms of texts. We pay our bills. We bank.
9 It's an endless amount of things that we do.

10 So think about how important connectivity is. How
11 important is connectivity to these wireless networks?
12 That's what connects us to the world. That's what connects
13 us to our jobs. It's what connects us to the things we
14 like to do, and it's what connects us to our loved ones.

15 If your device wasn't compliant with the 4G or 5G
16 standard, you'd lose all of those connections. That's the
17 importance of the SEPs.

18 And the '654 patent's importance, it's much more
19 than this feature that he focused on in the
20 cross-examination. It's because we spend all of those
21 activities -- all the things that we do with our phone now,
22 we need user interface functionality that serves our
23 purposes. It's critically important.

24 You heard Dr. Putnam say that a commercially
25 essential patent is just as valuable and perhaps more

1 valuable than an SEP. And keep in mind the non-essential
2 patent is not limited by the FRAND obligation.

3 I want you also to think about the competitive
4 disadvantage that Pantech -- excuse me, that OnePlus would
5 be at if they weren't using these patents. Who would buy
6 these -- their phones if they weren't operating on the 5 --
7 5G or 4G networks properly?

8 The only reason that they're succeeding is because
9 their phones do operate there. These patents are
10 foundational to those network standards. They're using it
11 because they need it. And now they need to pay for what's
12 fair.

13 So they're going to tell you what's fair are the
14 Apple and Samsung licenses, right? But Dr. Putnam told
15 you, neither one of those parties needed a license. What
16 they bought, at best, was an insurance policy.

17 And so, again, what they're suggesting to you is
18 that an insurance policy to -- an insurance policy for a
19 portfolio of patents, it's different than this one,
20 smaller -- smaller by hundreds of patents, sets the rate
21 for the rest of the industry? They're telling you that
22 what's effectively an insurance policy from another company
23 sets the rate for companies that aren't licensed through
24 Qualcomm.

25 If that were true, again, we'd see a stack of

1 licenses for these SEP patents at the Apple rate. And you
2 haven't seen a single one.

3 So what does your common sense tell you about
4 that? Does that make sense?

5 THE COURT: Mr. Culbertson, you have three minutes
6 remaining.

7 MR. CULBERTSON: Thank you, Your Honor.

8 If we could go to PDX-7-31, please?

9 Dr. Putnam described to you what was FRAND, and
10 his base number -- what he described as the floor, \$836,591
11 for the SEPs, and \$294,383 for the non-SEPs. That's before
12 the discounts can be added back in.

13 Recall, he said those discounts can be added back
14 in because now we have certainty. We have certainty that
15 these patents are valid. We have certainty that these
16 patents are infringed. And we have certainty about the
17 infringing sales. All of that is known.

18 So if you think about -- if you think about it
19 this way, if I made a bet in June that the Cowboys were
20 going to win the Super Bowl in February, I'd get some
21 pretty good odds, right? I'd bet 10 bucks, and I could
22 probably win a thousand because we have so many unknowns.
23 We don't know who the players are, et cetera.

24 Fast forward to February, and they've made it.
25 Now if I make that \$25 bet, all I'm going to win is 25

1 bucks, right? The time for the generous odds are gone
2 because everything is known; all the certainties are there.

3 And it's the same thing here. The time for the
4 discounted rate is gone. It's appropriate at this point --
5 if we could go to PDX-7-26, please -- to remove those
6 discounts per this chart.

7 And, folks, you heard Mr. Jung talk about these
8 figures. He talked about these discounts, and we've
9 demonstrated the math here for you in order to get back to
10 the undiscounted rate.

11 So if we could go, please, to Slide PDX-32,
12 please, Mr. Ebersole?

13 This was what we suggest is the appropriate
14 undiscounted measure of damages here because we do know the
15 patents are infringed, we do know they're valid, and we do
16 know the measure of sales.

17 For the SEPs, it's \$1,187,960, and for the user
18 interface patent, the '654, it's \$490,639.

19 That, ladies and gentlemen, is what is fair, and
20 that's all that we're asking you to award.

21 Thank you very much.

22 THE COURT: Thank you, Mr. Culbertson.

23 All right. Ladies and gentlemen of the jury, it's
24 now time for you to return to the jury room to begin your
25 deliberations in this case. You'll have a copy of the

1 final jury instructions that I reviewed with you, as well
2 as one copy of the verdict form.

3 The exhibits admitted into evidence will be
4 brought up shortly.

5 The first thing you should do is select one among
6 your number to serve as the foreperson who will guide and
7 direct your deliberations.

8 As a reminder, if at any time during your
9 deliberations you want to recess, you're welcome to do
10 that. We're on your schedule at this point. But I would
11 ask that you follow all of the instructions and the
12 cautions about your conduct that I have previously given
13 you.

14 After you have reached a unanimous verdict, your
15 foreperson should fill in, date, and sign the verdict form.

16 And, finally, if for any reason you need to
17 communicate with me at any time during your deliberations,
18 there is note paper in the jury room for that purpose.

19 If the foreperson would just fill out whatever the
20 communication is and hand it to the CSO, he'll bring it
21 directly to me.

22 All right. We will await your verdict.

23 COURT SECURITY OFFICER: All rise.

24 (Jury out.)

25 THE COURT: Okay. Make sure each side has given a

1 cell phone number to Ms. Combs so we can reach you in the
2 event of a note or a verdict. And don't get too terribly
3 far from the courthouse.

4 Anything either party wishes to address?

5 MR. THOMPSON: Nothing from Defendant, Your Honor.

6 MR. FUSSELL: Nothing from the Plaintiff,
7 Your Honor.

8 THE COURT: Okay. We'll be in recess.

9 (Recess.)

10 COURT SECURITY OFFICER: All rise.

11 THE COURT: All right. We have received two
12 notes. The first indicated that Mr. Gonzalez is the
13 foreperson. And the second indicated at 12:12 that the
14 jury had reached a verdict.

15 Is there anything we need to discuss before we
16 have the jury brought into the courtroom?

17 MR. FUSSELL: Not from the Plaintiff, Your Honor.

18 MR. AIRAN: Not from the Defendant.

19 THE COURT: All right. Mr. Goecke, if you would
20 have the jury brought in.

21 COURT SECURITY OFFICER: Please stand for the
22 jury.

23 (Jury in.)

24 THE COURT: Please be seated.

25 Mr. Gonzalez, I understand that you are our

1 foreperson; is that correct?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: All right. And has the jury reached a
4 verdict?

5 THE FOREPERSON: Yes, sir.

6 THE COURT: Is the verdict unanimous?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: All right. I'm going to ask you to
9 hand the verdict form to Mr. Goecke, and he will bring it
10 around to Ms. Combs so that she can read it.

11 And I'm going to review it before she does that.

12 All right. Now, ladies and gentlemen of the jury,
13 as Ms. Combs reads the verdict, at this time, I'm going to
14 ask all of you to listen very carefully to her as she does
15 that, because as she finishes, I'm going to ask each of you
16 if that is your verdict so that we can confirm its
17 unanimity.

18 Ms. Combs?

19 COURTROOM DEPUTY: Question No. 1: What damages,
20 if any, expressed as a total dollar amount, has Pantech
21 proven by a preponderance of the evidence would fairly and
22 reasonably compensate Pantech for its damages resulting
23 from OnePlus's infringement of the SEPs, '247, '839, and/or
24 '954?

25 And the answer filled in is \$739,708.43.

1 Question No. 2, what damages, if any, expressed as
2 a total dollar amount, has Pantech proven by a
3 preponderance of the evidence would fairly and reasonably
4 compensate Pantech for its damages resulting from OnePlus's
5 infringement of the '654 patent?

6 The answer filled in is \$260,291.57.

7 All right. Thank you, Ms. Combs.

8 Ladies and gentlemen of the jury, let me poll you
9 at this time and make sure that this is the unanimous
10 verdict of the entire eight members of the jury.

11 Will all of you who voted for this verdict as
12 Ms. Combs has read it please stand?

13 (Jury polled.)

14 THE COURT: All right. Please be seated.

15 And let the record reflect that all twelve -- all
16 eight members of the jury immediately rose and stood in
17 response to my request to poll the jury.

18 The verdict will be filed with the Clerk of Court.

19 Ladies and gentlemen of the jury, this now
20 completes the trial of this case. From the very beginning,
21 I repeatedly asked you not to discuss the case with anyone,
22 including among yourselves, until you retired to begin your
23 deliberations and then to only discuss it among yourselves.

24 I'm now releasing you from those obligations. You
25 are free to talk about the case among yourselves, your

1 friends, your family, anybody you want. And by the same
2 token, you are free not to say another word to any --
3 anybody about it. You're no -- under no obligation one way
4 or the other.

5 I have a practice in my court that I will ask you
6 to wait for me after I have excused you for a few minutes.
7 I need to visit with you briefly, but I would like to come
8 in and talk to you about our operations and how we conduct
9 trials and -- and the like to see if there are anything --
10 anything -- to see if there's anything we can do to improve
11 our operations and to enhance and improve upon your
12 experience as jurors.

13 It's really just an opportunity for us to visit
14 about whether there is anything I can do to be a better
15 judge and if there's anything that we can do as a public
16 institution to function better and to serve the public more
17 effectively.

18 So Mr. Goecke and Mr. McKinnie are going to take
19 you upstairs to the jury room, and I will be up in just a
20 few minutes to visit with you and thank you for your
21 service and to ask you for any suggestions you all may have
22 about how we do our jobs.

23 I do want to thank you on behalf of the Eastern
24 District of Texas for your dedicated service as jurors in
25 this case. I and the parties and the attorneys deeply

1 appreciate your willingness to give up three days of your
2 lives of -- this week to devote your attention to getting
3 this case resolved. The parties have not been able to
4 resolve the case without the assistance of a jury, and if
5 you were not here, we would not be getting this matter
6 resolved. So I appreciate your time and your effort in
7 that regard.

8 I say this in every trial that I have, and I
9 believe it more and more in every trial that I have, I
10 think there are three pillars to good citizenship in
11 America. The first is answering the call of military
12 service when your nation needs you. The second is being an
13 active and informed voter. And the third is by serving as
14 a juror. And all eight of you have clearly responded to
15 that call by serving as jurors in this case.

16 Our Constitution and in particular the Seventh
17 Amendment to the Constitution depends upon having active
18 citizens like each of you who are willing to participate
19 in -- in trials so that disputes just like this one can be
20 resolved. And I can't tell you how important this service
21 is and how much the Court appreciates it.

22 So on behalf of the parties and the attorneys
23 involved in the case and the Eastern District of Texas,
24 thank you again for your service in this matter.

25 At this time, you'll be excused, and Mr. Goecke

1 and Mr. McKinnie will escort you upstairs.

2 COURT SECURITY OFFICER: Please stand for the
3 jury.

4 (Jury out.)

5 THE COURT: All right. Please be seated.

6 All right. Anything about the verdict from the
7 Plaintiffs?

8 MR. FUSSELL: No, Your Honor.

9 THE COURT: Anything from the Defendants?

10 MR. AIRAN: No, Your Honor.

11 THE COURT: Okay. I gave you a little warning
12 yesterday that I was going to ask for fairly quick briefing
13 for any post-trial motions, and I meant that.

14 I am going to ask that you all have your opening
15 briefs -- any opening motion -- briefing filed by October
16 30th, which is two weeks, roughly, from today.

17 And I'm going to go ahead and give you a couple of
18 dates for a post-trial motion hearing, and I don't know
19 exactly which day, but it'll either be December 16th or
20 December 17th. I would like to have the motions fully
21 briefed by December the 5th, and I'll ask the parties to
22 meet and confer on what those interim deadlines are.

23 So I think you all can work that out as long as
24 everything is fully briefed by December the 5th with a view
25 toward having a hearing on December the 16th or 17th and

1 with the opening motions or opening briefs filed on October
2 the 30th.

3 Is that acceptable to the Plaintiffs?

4 MR. FUSSELL: Yes, Your Honor. I would just have
5 one comment. With the brief that has been filed already,
6 can we align it with the schedule that the Court --

7 THE COURT: I think that makes sense.

8 Any objection?

9 MR. AIRAN: No objection, Your Honor.

10 THE COURT: All right. Good enough.

11 MR. FUSSELL: Thank you.

12 THE COURT: Does the schedule I'm suggesting to
13 the Defendant make sense, as well?

14 MR. AIRAN: Yes, Your Honor.

15 THE COURT: Okay. What else?

16 Okay. Thank you all for a good trial.

17 MR. AIRAN: Thank you, Your Honor.

18 COURT SECURITY OFFICER: All rise.

19 (Trial concluded at 12:42 p.m.)
20
21
22
23
24
25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2025

10/17/2024
Date